2

ALASKA COAL-LEASING BILL

HEARING

BEFORE THE

COMMITTEE ON THE PUBLIC LANDS

HOUSE OF REPRESENTATIVES
SIXTY-THIRD CONGRESS
SECOND SESSION

ON THE BILL

H. R. 13137

TO PROVIDE FOR THE LEASING OF COAL LANDS IN THE TERRITORY OF ALASKA, AND FOR OTHER PURPOSES

PART I

FEBRUARY 17, 1914

WASHINGTON
GOVERNMENT PRINTING OFFICE
1914

ALASKA COAL-LEASING BILL.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE PUBLIC LANDS,
Tuesday, February 17, 1914.

The committee met at 10 o'clock a. m., Hon. Scott Ferris (chairman) presiding.

The CHAIRMAN. Gentlemen of the committee, we have before us this morning the bill (H. R. 13137) known as the Alaska coal-leasing bill. Pursuant to a conference had by the committee at the last meeting, we have invited Secretary Lane to appear and bring with him such representatives of the Geological Survey and other branches of the department as he thought would be helpful to us in arriving at a just conclusion about this bill. Unless there is objection, we will reserve a place in the record for the formal recommendation of the Secretary on this bill.

(The recommendation of the Secretary of the Interior on said bill is as follows:)

THE SECRETARY OF THE INTERIOR,
Washington, February 17, 1914.

MY DEAR MR. FERRIS: In response to your favor asking my opinion of the Alaska coal-leasing bill (H. R. 13137), I beg to reply that this bill has my hearty indorsement.

Respectfully,

FRANKLIN K. LANE.

HON. SCOTT FERRIS,
Chairman Committee on the Public Lands,
House of Representatives.

STATEMENT OF HON. FRANKLIN K. LANE, SECRETARY OF THE INTERIOR.

The CHAIRMAN. Just one word before the Secretary begins. Does any member of the committee feel sufficiently opposed to a leasing bill for Alaska to make it necessary for the Secretary to go into a general discussion of the question of leasing? If not, it seems to me that the greatest aid he can render us to-day would be to take up the bill section by section and explain it.

Mr. FRENCH. Would it not be advisable to have a more extended statement on that subject, to help the committee on the floor of the House?

The CHAIRMAN. I do not object to that at all.

Mr. FRENCH. I think we could very properly have a general statement for use there.

Mr. GRAHAM. Let me suggest that, inasmuch as the time we have at our disposal to-day is very short, it might be advisable to have that

statement submitted in writing. The Secretary might submit that in the form of a letter.

Secretary LANE. I have a brief statement to make outlining the bill. In the first place, let me file with you some data collected by some of the bureaus of my department dealing with the extent of the coal fields, the coal production and consumption, and the oil consumption in Alaska.

(The matter referred to is as follows:)

LEASING ALASKA COAL LANDS.

THE COAL FIELDS.

The known areas of coal-bearing rocks of Alaska according to the Geological Survey include about 16,000 square miles (12,240,000 acres), and of this 1,210 square miles (774,400 acres) is pretty definitely known to be underlain by workable coal beds. The rest of the fields have not yet been surveyed in sufficient detail to permit of definite statement of the percentage of actual coal lands. About 12 per cent of the total known coal lands are anthracite, semianthracite, semibituminous, and bituminous coal, the balance being subbituminous and lignitic coals.

The most important fields are the Bering River, including about 50 square miles (32,000 acres) of coal lands, and the Matanuska, including about 100 square miles (64,000 acres) of coal lands. Both these fields contain high-grade bituminous and anthracite coals and both include coking coals. Some of the coal beds in both fields have been crushed so as to seriously detract from their value, if not to render them worthless, but workable beds undoubtedly exist in both fields. There is some high-grade bituminous coal near Cape Lisburne, on the Arctic seaboard, but this is too inaccessible to enter into the present fuel situation.

Subbituminous coals have been found on the Alaska Peninsula and also in northwestern Alaska. Those on the Alaska Peninsula have value for local use, but are not high enough grade to warrant export.

Lignitic coal finds a very wide distribution in Alaska. The largest of the known areas are those of the west side of the Kenai Peninsula and the Nenana field, located on the south side of the Tanana Valley and about 50 miles from Fairbanks. This lignitic coal has value for local use, but is not of a sufficiently high grade to warrant its export.

COAL-LAND LAWS AND WITHDRAWALS AND GRANTING OF PATENTS.

The coal-land laws were extended to the Territory of Alaska by act of June 5, 1900 (31 Stat., 658), and further provision made for the disposition of those lands by the act of April 28, 1904 (38 Stat., 523), and by the act of May 28, 1908 (35 Stat., 424).

All Alaska coal lands were withdrawn from entry November 12, 1906, except those embraced in valid existing claims.

Total number of claims presented in Alaska under coal-land laws, 1,126; total number of claims canceled to date, 561; total number of claims patented, 2; number of claims now pending, 566, many of which have been held for rejection by the General Land Office. The claims patented are as follows: One known as the Wharf claim, in Kenai Peninsula and on Cook Inlet, containing about 66 acres; the other, on Admiralty Island, in southeastern Alaska, containing about 160 acres. The coal in both these claims is lignite.

COAL PRODUCTION AND CONSUMPTION.

The coal production of Alaska in 1912, according to the Geological Survey, was 355 tons. Preliminary estimates for 1913 indicate an output of about 1,200 tons. This increase is due to the systematic working of the Whorf mine, on Cook Inlet, to which patent was granted in 1912. The coal from this mine finds a ready market for local use. While the Alaska coal output has been insignificant, the annual consumption in the Territory is over 100,000 tons. This does not include the coal used by the ocean steamers running to and along the coast of Alaska. These steamers probably use 50,000 tons annually. The fol-

lowing table shows the annual coal consumption of Alaska since 1899. This table shows that about 60 per cent of the coal consumed in Alaska is of foreign source, and most of this comes from the Vancouver Island fields, in British Columbia. The coal output of Alaska has been chiefly lignite, which has been mined from small banks for local use. In 1907, however, under special permit, Mr. MacDonald operated a small mine on the Bering River field. This mine is located in the southwestern margin of the field, on Bering Lake, and the coal was brought down in small scows. This coal is bituminous and found a ready market in the near-by construction camps of a railway, and is reported to have given good satisfaction.

Coal consumption of Alaska, by sources, 1899 to 1912, in short tons.

Year.	Imported from States, chiefly from Washington.		Produced in Alaska, chiefly subbituminous and lignite.[2]	Total domestic,[2] chiefly from Washington.	Total foreign coal, chiefly bituminous, from British Columbia.[3]	Total coal consumed.
	Bituminous.	Anthracite.				
1899	[1] 10,000	.....	1,200	11,200	50,120	61,320
1900	15,048	.....	1,200	16,248	56,623	72,871
1901	[1] 24,000	.....	1,300	25,300	77,674	102,974
1902	[1] 40,000	.....	2,212	42,212	68,363	110,575
1903	64,625	1	1,447	66,073	60,605	126,678
1904	36,689	.....	1,694	38,383	76,815	115,198
1905	67,707	6	3,774	71,487	72,567	144,054
1906	68,960	533	5,541	75,034	47,590	122,624
1907	45,130	1,116	10,139	56,385	88,596	144,981
1908	23,402	491	3,107	27,000	72,831	99,831
1909	33,112	.....	2,800	35,912	74,316	110,228
1910	32,138	.....	1,000	33,138	73,904	107,042
1911	32,255	.....	900	33,155	88,573	121,728
1912	27,767	.....	355	28,122	59,804	87,926
Total	520,833	2,147	36,669	559,649	968,381	1,528,030

[1] Estimated. [2] By calendar years. [3] By fiscal years ending June 30.

While the coal consumption in Alaska has remained nearly stationary, the use of fuel oil has very much increased. The Treadwell group of mines now uses California oil, as do many of the dredges at Nome, steamers running to Alaska, and the Yukon River boats. The Copper River Railway is now in part equipped with oil-burning locomotives, while the Alaska Northern Railroad, when operated at all, uses a gasoline car. The Tanana Valley Railroad also runs a gasoline passenger coach. The following table indicates the increased use of oil-burning and gasoline engines in Alaska:

Shipments of petroleum products to Alaska from other parts of the United States, 1905–1911, in gallons.

Year.	Crude.		Naphtha.		Illuminating.		Lubricating.	
	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.
1905	2,715,386	$91,068	713,496	$109,921	627,391	$113,921	83,319	$31,660
1906	2,688,100	38,409	580,978	100,694	568,033	109,964	83,992	32,854
1907	9,104,300	143,506	636,881	119,345	510,145	99,342	100,145	37,929
1908	11,891,375	176,483	939,424	147,104	566,598	102,567	94,542	36,423
1909	14,034,900	334,258	746,930	118,810	531,727	98,786	85,687	35,882
1910	18,835,670	477,673	788,154	136,569	626,972	95,483	104,512	38,625
1911	18,142,364	406,400	1,238,865	167,915	423,750	57,896	100,141	34,048

ALASKA COAL CLAIMS.

According to the report of the Commissioner of the General Land Office 1,129 Alaska claims were recorded. This means 1,129 locations not exceeding 160 acres each. Of this number 561 have been canceled to date, 2 have been patented, and 566 are pending, most of the latter either having been held for

cancellation for irregularity or being under investigation because of alleged illegality. The claims canceled, patented, and pending are shown by coal fields in the following table:

Canceled Alaska coal claims:	
Bering River coal field	224
Matanuska coal field	90
Cook Inlet coal field	118
Admiralty Island coal field	31
Alaska Peninsula coal field	38
Nome coal field	13
Fairbanks coal field	15
Miscellaneous, field not shown	31
Total	561
Alaska coal claims patented:	
Admiralty Island coal field	1
Cook Inlet coal field	1
Total	2
Alaska coal claims pending:	
Bering River coal field	287
Matanuska coal field	51
Cook Inlet coal field	172
Admiralty Island coal field	10
Fairbanks coal field	21
Nome coal field	5
Miscellaneous	20
Total	566

Secretary LANE. I now propose, with your permission, to take up the bill section by section, so that you may have a clear understanding of it.

LANDS TO BE SURVEYED.

Section 1 directs the survey of lands in Alaska known to be valuable for deposits of coal, preference to be given to surveying lands within the Bering River and Matanuska coal fields, and thereafter to such coal fields as lie tributary to established settlements or existing or proposed transportation lines. With the exception of limited agricultural areas in some of the valleys of Alaska, the public-land surveys have not been extended over the Territory. Before the lands can be leased to applicants, in the form and for the minimum or maximum areas permitted by the bill, and before reservations for public use, as contemplated, can be made and defined, it is essential that the lands be surveyed and the boundaries clearly and definitely marked upon the ground. Preference is given first to the Bering River and Matanuska fields, because they contain deposits of anthracite and high-grade bituminous coals, some of which are believed to be adapted to use by the United States Navy, and because those fields lie within comparatively easy distance of rail and water transportation. In the other fields containing chiefly lower grade bituminous or lignite coals it was deemed advisable to first make the surveys near established settlements or existing or proposed transportation lines.

Mr. CANTOR. During what period of time were those surveys made?

Secretary LANE. It is contemplated that they will be made immediately.

Mr. CANTOR. Have any been made heretofore?
Secretary LANE. Some surveys have been made.
Mr. CANTOR. For the purpose of ascertaining these deposits?
Secretary LANE. Yes, sir; and we have some of those reports, which will be filed with you.

LANDS RESERVED FOR THE UNITED STATES.

Section 2 directs the reservation of not more than 5,120 acres of coal-bearing land in the Bering River field and not exceeding 7,680 acres in the Matanuska field. The maximum amounts were determined upon in order that the remaining areas should be assured for private development through the leasing system. The amount reserved is deemed to contain an ample supply of coal for the purposes of the reservation, which are set out in the proviso to the section to be for Government works, the construction and operation of Government railroads, use of the Navy, national protection, and for relief from oppressive conditions brought about through the monopoly of coal. Aside from the possibility of the use of these coals for direct governmental use the reservations will, it is believed, provide a very effective check on monopoly, for, under the provisions of the bill, if such monopolistic conditions come to exist as warrant such action the President may cause the coal in the reserved areas to be mined and placed upon the market.

LANDS AND COAL DEPOSITS TO BE LEASED.

With the exception of the reservations described in section 2, the remaining coal lands in Alaska, after survey, are to be divided into leasing blocks of 40 acres each, or multiples thereof, in no case exceeding 2,560 acres in any one block, and such blocks or tracts to be leased through advertisement, competitive bidding, or such other methods as may be provided by general regulation to citizens, associations, or corporations. The bill authorizes the lands to be leased in such form as will permit the most economical mining of the coal, a provision of importance because of the peculiar topography of the coal fields, particularly those which contain the better grades of coal. The minimum of 40 acres was fixed because that is the smallest subdivision of the public-lands surveys, and because it was believed that individual miners and those desiring to supply small and local markets might desire to lease and operate smaller areas than those persons and corporations who engage in the coal-mining business in a large way. The maximum of 2,560 acres was fixed, because experience in the United States has demonstrated that area, when underlaid by coal beds of approximately the thickness of those under consideration, to be an ample amount to warrant the proper equipment, opening, and operation of a large and permanent coal mine.

NEW LEASE FOR ADDITIONAL LANDS.

Section 4 provides that a lessee whose original lease did not cover the maximum area may, with the approval of the Secretary of the Interior, and under the same procedure, terms, and conditions as in the case of an original, secure a further or new lease covering addi-

tional lands contiguous to the original lease, provided the combined area of the two leases does not exceed 2,560 acres. This provision is designed to permit those who have secured a lease for a small area and have developed and mined the coal deposits therein to extend their workings and secure the coal in vacant contiguous lands.

CONSOLIDATION OF LEASES.

Section 5 permits lessees holding small blocks to consolidate their leases or holdings so as to include not exceeding 2,560 acres. It was thought that in some instances individual miners might apply for and secure leases for small blocks and thereafter find that economic mining might best be carried on through combination with the holders of adjacent small holdings.

TO PREVENT MONOPOLIZATION.

Section 6 prohibits any person, association, or corporation from acquiring or holding any interest as stockholder or otherwise in more than one lease under the act. The penalties for violation of this provision are contained in sections 6, 7, and 8, and are: (1) Forfeiture of any interest held in violation of this provision by proceedings instituted by the Attorney General in a court of competent jurisdiction; (2) punishment of any person who purchases, acquires, or holds such an interest in two or more leases, or who shall knowingly sell or transfer to a disqualified person, by imprisonment for not more than three years and by a fine not exceeding $1,000. Section 8 prescribes the same penalty for any director, trustee, officer, or agent of a corporation holding an interest in a lease who shall, on behalf of the corporation, act in the purchase of an interest in another lease or who shall knowingly act on behalf of the corporation in the sale of such an interest in any lease held by the corporation to a disqualified person.

ROYALTIES.

Section 9 requires the payment to the United States of a royalty upon coal mined of not less than 2 cents per ton, due and payable at the end of each month succeeding that of shipment of coal from mine. An annual rental of 25 cents per acre for the first year, 50 cents for the second, third, fourth, and fifth years, and $1 per acre for each year thereafter, is exacted, but the rental for any year is credited against the royalties for that year. Leases are for indeterminate periods on condition of continued operation, and that at the end of each 20-year period such readjustment of terms and conditions may be made as are authorized by law. The minimum fixed is very low and no maximum has been fixed for the reason that the situation, extent, and character of the coal deposits in Alaska are so varied and different as to necessitate the vesting of discretion in the officers charged with the leasing of the coal. The rental provision is designed to insure reasonably continuous operation of the coal mines. Lessees are are unwilling to expend the money necessary for the thorough equipment of a large mine under a lease for a short period, therefore the leases are indeterminate. Conditions,

however, may materially change from time to time, and for this reason provision was made for such adjustment of terms and conditions might be made at the end of 20-year periods as Congress might authorize. Provision is made for relieving lessees from continued operation of mines where same are interrupted by strikes, the elements, or casualties not attributable to the lessee.

FREE MINING FOR LOCAL USE PERMITTED.

Section 10 authorizes the Secretary of the Interior, under such rules as he may prescribe, to issue a limited permit for the mining of coal on not exceeding 10 acres to any person or association for not exceeding 10 years. This provision is in order to provide coal for strictly local and domestic needs for fuel, and is without payment of any rental or royalty. This will allow homestead settlers, miners, or other residents or business corporations or associations in the Territory to secure a limited amount of coal for domestic uses in the Territory.

RIGHT OF WAY RESERVED.

Section 11 provides for the reservation in all leases and permits issued of the right of the United States to grant or use such easements through or over the lands leased or occupied as may be necessary for the working of the same or for other lands by or under the authority of the Government. This provision is deemed essential in order that ingress and egress to mines may be secured to the United States or its lessees.

CONDITIONS OF LEASES.

Section 12 provides that no lease shall be assigned except with the consent of the Secretary of the Interior, and that each lease shall contain appropriate provisions for care in the operation of the property for the safety and welfare of miners, for the prevention of waste, and such other provisions as are necessary for the protection of the interests of the United States. These provisions are such as would be placed in an ordinary private lease, and are deemed essential for the protection not only of the United States but of the employees of the mines.

FORFEITURE THROUGH COURT PROCEEDINGS.

Section 13 provides that leases may be forfeited by appropriate proceedings in a court of competent jurisdiction when the lessee fails to comply with the provisions of the lease or of general regulations promulgated under the act. It also provides for the enforcement of other appropriate remedies for breach of conditions. It is obvious that some provision should be made for forfeiture in the event of breach of conditions, but for the security and protection of the lessee it is provided that this shall be through proceedings in the courts.

COURT JURISDICTION OVER DISPUTES.

Section 14 extends the jurisdiction of the district court of Alaska over forfeiture proceedings and over any and all controversies which

may arise between the United States and any lessee or other person under the act or under leases issued. The purpose of this section is to permit of the determination of all controversies and causes arising under the act in the same manner as controversies between citizens.

REPORTS.

Section 15 requires that statements or reports required by the Secretary under the act shall be under oath and in such form as may be required and subjects any person making a false oath to punishment for perjury.

ROYALTIES TO GO INTO FUND FOR DEVELOPMENT OF ALASKA.

Section 16 provides that all moneys received from royalties and rentals shall be paid into a special fund, to be subject to such disposition as Congress has made or may make for the development of Alaska, and particularly subject to such application as may be made by Congress of moneys for the construction of railroads. The undeveloped condition of the Territory and the imperative necessity for the building of highways, railroads, and other public improvements, which will induce settlement and development of the resources, renders it important that the receipts from public lands shall be available for these internal improvements. The Alaskan railroad bill, which has passed the Senate, devotes 75 per cent of such returns to the railroad fund.

RULES AND REGULATIONS.

Section 17 authorizes the Secretary of the Interior to prescribe necessary rules and regulations to carry out the proposed act.

I have outlined this bill at somewhat wearisome length perhaps that you might have clearly in mind at the beginning of this inquiry the simple lines upon which it is drawn. It is a leasing bill with a minimum of detail and a maximum of advantage to Alaska. It lays all practicable safeguards against monopoly and yet permits of large working areas. It reserves to the United States definite tracts in the known fields, more than sufficient, it is believed, for all governmental needs, and throws upon to immediate individual use the lesser coal beds under safe restrictions. I can think of nothing which could be done to make Alaska coal a world resource for which this does not provide. Its terms appeal to me as those which will make for the full opening of Alaska's coal lands with but the slightest opportunity for their monopolization. It is aimed to compel the development of coal and not to form a foundation for speculation in the value of coal lands.

The plan proposed—to lease the lands to operators—has several points of value. It is in the first place the normal plan. Not only is this recognized by many of our Western States in their statutes governing the disposition of State-owned coal and ore lands, but it is the method under which practically 90 per cent of the coal of this country is mined. We hear of coal operators and mine workers, but seldom of coal-land proprietors. This is because the coal of the country is not mined generally by the landowner, but by lessees.

In some of our largest fields the royalty paid is more stable than the freight rate or the price of coal itself. In some of the Australian colonies where coal is produced for export to South America and this country the law permits coal lands to be bought or to be leased. Yet the sale of the land is practically unknown. The reason is apparent.

Why tie up capital in the coal itself when such capital may be more profitably used in development? And one may reasonably ask, Why should it be the policy of our people to limit coal operations in Alaska or elsewhere to those who have money enough to allow a large investment to lie idle in a coal field? Could there be a greater temptation to monopoly or a more certain warning to men of small means that they are not to be regarded as factors in the coal industry?

I feel confident that the people of the United States are convinced not only that Alaska's coal should be made available but that it is the wisest and safest policy to open these lands under a leasing system.

As to the need for this coal, I certainly can not add one persuasive argument with which you are not now familiar. A land where there are five months of winter, where in parts the land itself must be thawed out before it will yield its riches—could there be a country of greater need? And who can wonder that the people of Alaska have felt resentment that their long cry for help has not been heeded?

But Alaska is not to be thought of as continuing in her present industrial and economic condition. We are about, I trust, to make that country more intimately our own by building a Government railroad from the coast northward. Such road or roads will take away the terrors of isolation which have haunted those who live there. And with railroads a new Alaska will be possible—coal and iron, coal and copper will be brought together, and where these come together as all know great communities arise. The coals of the Matanuska and the Bering River fields make excellent coke. We may survey the whole Pacific slope for any other body of similar or equally valuable coal. So that irrespective of what our Navy may require or of what Alaska's domestic and present industrial needs may be the industrial development of the Pacific coast makes call upon Congress to place this fuel supply at the command of the public.

For seven years the coal of Alaska has been withdrawn from use. This has been an act of cruelty to the people of Alaska and an act of injustice to ourselves. We know why it was done, because by fraud men sought to evade our laws and take to themselves that to which they had no right. Out of some 1,100 claims which were filed upon about one-half have been declared fraudulent, and the remainder are still unadjudicated. That discreditable episode is now a matter of history, which I am sure has fixed its lesson in the American mind. And now the opportunity has come to reopen the coal fields of Alaska under a method which will insure against private monopoly, and make Alaskan coal serve properly in Alaskan and national development.

The CHAIRMAN. We are a little pressed for time at this hearing, and I was wondering if you had time to submit to any questioning at all this morning.

Secretary LANE. I would like to do that at some later time. I must attend a Cabinet meeting at 11 o'clock.

The CHAIRMAN. Then at some later time we can have you with us.

Secretary LANE. I have here various representatives of my department. Dr. Smith, the Director of the Geological Survey; Mr. Brooks, who has been our surveyor up there for a great many years and who is thoroughly familiar with Alaska; Dr. Holmes, Director of the Bureau of Mines; and Mr. Finney, of the legal department, are present and will give you such information as you desire.

Mr. LENROOT. Is there some one present with whom we can take up the details of the bill?

Secretary LANE. Yes, sir; Mr. Finney, from our law department, is here.

The CHAIRMAN. We are very much obliged to you, Mr. Secretary.

Well, whom would you gentlemen prefer to hear next? Have you any preference among you as to who should make the next statement on the bill?

Mr. RAKER. Mr. Finney could go into the legal features of it, I understand.

The CHAIRMAN. He helped to draw the bill.

Mr. RAKER. Then I suggest that we have his explanation of the matter.

STATEMENT OF MR. EDWARD C. FINNEY, ASSISTANT ATTORNEY, DEPARTMENT OF THE INTERIOR.

The CHAIRMAN. Mr. Finney, you have had something to do with the drawing and preparation of this bill, have you not?

Mr. FINNEY. Yes, sir; I assisted in drawing the bill.

The CHAIRMAN. And you attended the several conferences with the Secretary and others upon it?

Mr. FINNEY. I did.

The CHAIRMAN. Is there any statement, in addition to the Secretary's statement, that you care to make regarding the bill?

Mr. FINNEY. I think the statement Secretary Lane has made covers the bill pretty thoroughly, but I would be glad to answer the questions of any member of the committee.

The CHAIRMAN. Does any member of the committee desire to ask Mr. Finney any questions regarding the bill?

Mr. LENROOT. I want to call your attention to section 3 of the bill, particularly to the language in lines 23 and 24 of that section, on page 2, as follows: "And thereafter, subject to any prior valid existing rights, the Secretary shall offer," etc. What was the thought there?

Mr. FINNEY. As you know, the coal-land laws of the United States, and especially the act applicable to Alaska, have been enforced in Alaska for a number of years, and prior to the withdrawal of the coal lands in Alaska by President Roosevelt, in 1907, a number of locations had been initiated under those laws. The total number on record, I think, is shown in the General Land Office to be 1,129. Of those claims approximately 560 have been canceled and rejected, and the remainder are still pending before the Land Department, either under investigation or awaiting the decision of the commissioner on hearings that have been had. The thought was that perhaps some

of those claims were valid ones; and if so, the idea was not to lease any lands covered by those valid existing claims.

Mr. LENROOT. The effect of this clause, then, would be to give the courts jurisdiction of all those cases, would it not?

Mr. FINNEY. I do not so understand it; no, sir.

Mr. LENROOT. Why not?

Mr. FINNEY. Because under existing laws the adjudication of those claims rests with the Department of the Interior.

Mr. LENROOT. So far as questions of fact are concerned?

Mr. FINNEY. Yes, sir.

Mr. LENROOT. Do you think, Mr. Finney, where the Government undertakes to lease its own property, there having been a prior withdrawal, that it stands under the lease in the same relationship as where the Government parts with its title to some third party and where the third party can be held to be the trustee for a prior valid title? In other words, is the situation the same?

Mr. FINNEY. Well, that is a rather difficult question for me to answer. One answer might be that if the Government engages in business, then the Government should incur the same obligations and penalties that the private citizen who engages in business incurs; but from another standpoint, that of the conservation of these coal deposits and their development under the leasing system, it would, perhaps, be advisable that the decision of the Department of the Interior in these cases should be final, and that any claimant whose claims are adjudged to be invalid should not have any further remedy, but should simply have the right which other citizens will have of applying for and obtaining a lease for some of these coal lands.

Mr. SINNOTT. Were you apprehensive lest the lessee in a suit should be declared to be the trustee for some former applicant?

Mr. LENROOT. Yes, sir.

Mr. FINNEY. I do not think that would be the case because the title to the land and deposits would still remain in the United States.

Mr. GRAHAM. In any event, could the former applicant have anything more or greater than a claim for damages, and not a claim or lien of any kind on the title?

Mr. FINNEY. If the United States had patented the lands to any citizen——

Mr. GRAHAM. In the absence of a patent?

Mr. FINNEY. I do not think he could have anything more in the absence of a patent.

Mr. LENROOT. That would be so if it were not for this language that would recognize that, perhaps, in an action between the lessee and a former applicant——

The CHAIRMAN (interposing). What language do you refer to, Mr. Lenroot?

Mr. LENROOT. I refer to the language in line 24 at the bottom of page 2, "subject to any prior valid existing rights."

The CHAIRMAN. Of course, you can well understand the difficulties which confronted the framers of this bill; there are some bona fide people there undoubtedly, and there are many who are not bona fide, and how to separate the sheep from the goats without doing serious damage has been a very troublesome matter.

Mr. LENROOT. The question arising in my mind is first, a legal proposition as to what we can do, and then, second, whether it is a wise policy that we should do it.

The CHAIRMAN. Of course, that is true.

Mr. RAKER. How many of these claims are now unadjudicated?

Mr. FINNEY. The total number recorded was 1,129.

The CHAIRMAN. How many are unadjudicated?

Mr. FINNEY. The total number recorded was 1,129, and of this number 561 have been canceled and 2 have been patented.

Mr. RAKER. What is the area covered by each one of these claims?

Mr. FINNEY. None of them exceed 160 acres.

The CHAIRMAN. Are you referring to the two patented claims?

Mr. FINNEY. To the entire 1,129 claims. The maximum area which could be located under the law was 160 acres.

The CHAIRMAN. What is the size of the two patented claims?

Mr. FINNEY. One of them was approximately 60 acres. That is the wharf claim at Cooks Inlet. The other claim embraces approximately 160 acres.

The CHAIRMAN. So that about 200 acres altogether have been patented?

Mr. FINNEY. Yes, sir.

Mr. GRAHAM. Neither of those patents cover coal lands in the Bering River or Matanuska fields?

Mr. FINNEY. No, sir.

Mr. RAKER. That would leave 474 claims unadjudicated?

Mr. GRAHAM. It would leave more than that.

The CHAIRMAN. The number of patented and canceled claims would be 563.

Mr. FINNEY. Leaving 566. That is according to figures obtained from the General Land Office last Saturday.

Mr. RAKER. Where are those claims located?

Mr. FINNEY. They are scattered throughout the different fields. I can obtain the figures. I think 290 of them were located in the Bering River field; perhaps about 40 were located in the Matanuska field, and the remainder are scattered around throughout the other fields.

Mr. RAKER. But there are 566 claims still pending and undetermined?

Mr. FINNEY. Yes, sir.

Mr. RAKER. Is it your opinion, from the legal standpoint, that the Government could not provide for the leasing of the lands covered by these claims, eliminating the question of prior valid existing rights?

Mr. FINNEY. My opinion is that in the case of a valid claimant, it is very doubtful whether the Government can deprive him of his rights and lease the lands. As I recall it, the coal-land law of 1904 is somewhat analagous to the general mining law providing for the location and marking upon the ground and recording of claims in the local recorders' offices and local land offices for survey. The proceedings are very similar to those under the mining laws. Now, it is quite probable that it would be held that a man who had fully complied with the requirements of the law with respect to the location and recordation of his claim and who had taken the other steps required by the law has a right which can not be taken away from him.

The CHAIRMAN. Let me ask you about the method of proceeding. You say there are 1,129 claims filed altogether?

Mr. FINNEY. Yes, sir.

The CHAIRMAN. And of that number 561 have been adjudicated and canceled and 2 have gone to patent, leaving 566 remaining to be adjudicated. Now, when were those 566 claims made or filed?

Mr. FINNEY. All of the claims were located prior to November, 1907.

The CHAIRMAN. All of them were recorded prior to that time?

Mr. FINNEY. Yes, sir.

The CHAIRMAN. Then, all of the claims are six or seven years old?

Mr. FINNEY. Yes, sir.

The CHAIRMAN. What is to be done in the adjudication of these remaining 566 claims?

Mr. FINNEY. I might say, in a general way, that every one of these claims has either been investigated or is under investigation. In a number of cases hearings have been had, at which the Government and the claimants have presented their evidence, and those records are in part before the local land offices for decision in Alaska; a part of them are before the Commissioner of the General Land Office, and a number of claims are pending before the department on appeals from adverse decisions by the General Land Office.

The CHAIRMAN. Have you the data here to show just how many of these claims are pending before each one of the tribunals you have mentioned?

Mr. FINNEY. I can not give that information now.

The CHAIRMAN. Can you state about how many are pending before each tribunal?

Mr. FINNEY. I do not think I can give you the figures now, but I can furnish them.

The CHAIRMAN. Do you know, Mr. Finney, as one of the law officers of the department, about what time will be required by the local land offices and the department here to pass all of these 566 claims to a final determination?

Mr. FINNEY. That is a very difficult question to answer. It depends to some extent upon the parties themselves. Under the rules, when a case is decided by the register or receiver, the appeal must be taken within 30 days. When the decision is rendered by the Commissioner of the General Land Office, the appeal must be taken to the Secretary of the Interior within 60 days after the notice of the decision, but in these land cases, where the parties require additional time within which to prepare arguments and briefs, it is usually granted, these being ex parte cases.

The CHAIRMAN. So that, while the office here by its rules provides a certain limit on appeals, there is no limit on the time for consideration. In other words, the office might be a year or two behind?

Mr. FINNEY. I was about to mention that fact, because it frequently happens that the various offices are behind with their work.

The CHAIRMAN. I was wondering what was the status of these particular cases with reference to the department having time to consider them; is the delay due to the pressure of business or is it due to delay in determining what policy should be pursued. Now, these cases have been in controversy for six or seven years, and I

would like to know how much longer time will be required in which to dispose of them?

Mr. FINNEY. I think the larger part of the delay, Mr. Chairman, occurred with regard to the investigations, reinvestigations, and examinations by the special agents, both in the field in Alaska and throughout the United States where some of the claimants reside, and the actual time consumed by hearings and decisions upon the records has not been so great. Most of these hearings have been held within the past two years, and the General Land Office is disposing of appealed cases quite rapidly. Now, there are between 100 and 200 claims pending before the Secretary on appeal, and in his office the mineral work is, perhaps, nearly a year in arrears.

Mr. LENROOT. What was the decision in those cases now pending on appeal? Were the decisions all one way?

Mr. FINNEY. The decisions were adverse to the coal-land claimants.

Mr. RAKER. Right in that connection, let me ask you this question: Is the Government the contestant in practically all of these cases?

Mr. FINNEY. Yes, sir.

Mr. RAKER. Then, is the objection of the Government against each of these claims about the same, or is the objection based upon practically the same grounds?

Mr. FINNEY. Of course you will understand that I have not examined the records in all these cases.

Mr. RAKER. Well, answer from your common observation and knowledge as far as you have gone into them.

Mr. FINNEY. I should say, generally, that there may be two classes of cases; one class in which it is specifically charged that the claimants have combined their claims or sought to acquire title contrary to the provisions of the law, and the other class of claims is where the parties failed to put their claims on record within the time prescribed by the law of 1904.

Mr. RAKER. Then there would be two general objections interposed by the Government to practically all of these claims, making two groups of claims, in one of which the objection is that the claims are contrary to law, and in the second group the objection is that the claimants have not put their claims on record in the manner provided by law.

Mr. FINNEY. Yes, sir.

Mr. RAKER. And the officers of the department, up to and through the General Land Office to the Secretary, have rendered adverse decisions on these claims up to the present time?

Mr. FINNEY. The decisions have been adverse to the claimants except in two cases in which patent were issued.

Mr. RAKER. Please state in a general way what you mean by the claimants combining their claims. Please explain in a general way what you mean by a combination of claims.

Mr. FINNEY. Well, the law limits the amount which may be located and entered to 160 acres to one individual——

Mr. RAKER (interposing). Or group of individuals?

Mr. FINNEY. Yes, sir. The difficulty, I think, is that 160 acres is hardly a large enough amount of coal land to justify the expenditure of the money necessary to open up and equip a coal mine, and that

resulted in claimants entering into agreements—that is, tacit agreements or unwritten agreements—to pool their issues and combine from 10 to 30 claims in a single group and work them.

Mr. RAKER. You mean that they would do the work as on one claim instead of on 15 or 20?

Mr. FINNEY. Yes, sir; to work 10 or 15 claims as one mine.

Mr. GRAHAM. Making one set of improvements for the entire group?

Mr. FINNEY. Yes, sir. There has been the charge in some cases that claims have been made for the benefit of others than the parties who appeared as the locators.

Mr. RAKER. That would naturally grow out of that condition?

Mr. FINNEY. Yes, sir.

Mr. RAKER. In a general way, what is the other objection as to the claimants not having recorded their claims properly?

Mr. FINNEY. The law of 1904 requires locators to file a notice of the location of their claims with the local land office and with the General Land Office within one year after the location is made upon the ground. Then it requires that within three years application for patent shall be made and a certain publication had. That has been construed by the department—it was decided by Secretary Fisher, I think—to be a mandatory requirement; and it has been held that the man who failed to record his claims with these officers at the end of a year, or failed to file application for patent within three years, was absolutely down and out, and that the department has no authority to condone that negligence.

Mr. RAKER. Does this bill relieve those people in any way?

Mr. FINNEY. No, sir.

Mr. RAKER. You are satisfied of that?

Mr. FINNEY. Surely. The purpose of this bill was to leave existing claims of all kinds for adjudication under the laws, rules, and regulations under which they were initiated. The purpose here is to absolutely leave the claimants out of consideration under this bill.

Mr. RAKER. In other words, the purpose is to leave all of these claimants entirely out of consideration in this bill, except for the purposes to which you called attention?

The CHAIRMAN. You do not mean that you leave them entirely out of consideration because you authorize the leasing of the lands subject to any prior valid existing rights. Is that what you had in mind—that language in line 24?

Mr. FINNEY. No, sir; I do not think that was the purpose. I do not think it is the intention to lease any of these claims until the existing rights of particular claimants have been disposed of.

The CHAIRMAN. Then you would not say that they are entirely eliminated?

Mr. FINNEY. No, sir.

Mr. SINNOTT. Is there any provision in this bill which contemplates the protection of laborers in the mines in the matter of their wages?

Mr. FINNEY. No, sir; there has been no provision made in this bill for that purpose. We thought that would be taken care of by the local laws.

Mr. SINNOTT. Is there any provision in the local law that would cover the matter of the protection of laborers for their wages while working in any of these leased coal mines?

Mr. FINNEY. I can not answer that question.

The CHAIRMAN. There is nothing in this bill to that effect.

Mr. FINNEY. There is nothing in the bill, and he asked whether there was anything in the local law of Alaska on that subject.

Mr. SINNOTT. That would apply automatically?

Mr. FINNEY. I know there are provisions there with respect to lands, but whether they would apply to leases under this bill I do not know.

Mr. STOUT. As I understand it, the purpose of this provision which has been referred to by Mr. Lenroot is simply this, that when the claims pending in the department, and which are at present unadjudicated are adjudicated favorably, patents will be issued. In other words, if the department finds that the law has been complied with, the claims will go to patent. There is nothing here to prevent patents from passing from the Government to these claimants.

Mr. FINNEY. That is correct.

Mr. STOUT. And the purpose is to make the provisions of this bill subject to the patent which may pass to these claimants after the claims have been investigated and adjudicated by the department.

The CHAIRMAN. That is assuming that the patent will be issued.

Mr. STOUT. There is nothing here to prevent the issuance of patents.

Mr. FINNEY. Our idea was that the claims would be adjudicated, and those found to be regular and legal would be patented, and, of course, that would remove them from this leasing provision.

Mr. STOUT. There is nothing here to prevent the patents from issuing where the claimants have regularly filed their claims and obeyed the law in all respects.

Mr. FINNEY. Nothing whatever.

Mr. LENROOT. You would not say that the language of the bill accomplishes only that purpose, would you? In other words, under the language of the bill, regardless of the adjudication of the department, in so far as any court could get jurisdiction, this bill, which would give it jurisdiction, although the patent had been denied. In other words, if there was any proceeding that could be brought against the lessee in which the question of the validity of his interest could be brought into issue, this bill would permit the trial of that issue before the court regardless of whether a patent had been denied by the department or not.

The CHAIRMAN. You do not mean to say that the language in section 3 confers that jurisdiction?

Mr. FINLEY. I would prefer to put it this way: This bill would not deprive them of any remedy they now have in court.

Mr. LENROOT. That might be true if this clause were left out entirely, but this clause being in the bill, of course, it would be construed as being here for some purpose. It would be so construed under the general rules of construction. Under the general rues of construction it would be deemed to give any rights that a court might enforce as between a patentee and a prior claimant.

Mr. FINNEY. The purpose was only to prevent the leasing of lands which might be covered by any prior valid existing rights.

Mr. LENROOT. Could not that be done by providing in the bill that none of these leases should be obtained on lands to which patent had been issued by the department?

The CHAIRMAN. But it is the unadjudicated rights that would stand in the way——

Mr. LENROOT (interposing). Make it read where patents have been or may be issued.

Mr. FRENCH. Would not language like this meet the situation: Suppose you omit the words Mr. Lenroot calls attention to, "subject to any prior valid existing rights," and insert after the word "tract" the words "of land not embraced within any unadjudicated entry."

The CHAIRMAN. Then, you would have to come back for a bill every time one of these entries was adjudicated.

Mr. FRENCH. I think that when the claims were adjudicated the Government would automatically have the right to lease the lands.

The CHAIRMAN. Let me see if I correctly understand Mr. Lenroot's contention: Do you think that the language in line 24, "subject to any prior valid existing rights," gives these claimants any more remedy than the law now provides? Under this language, could the claimant proceed otherwise than through the regular channel now provided by law for the adjudication of his claim?

Mr. LENROOT. Right there let me ask you what you mean by the word "adjudication"? Do you mean adjudication by the department?

The CHAIRMAN. Yes, sir; by the department. As I understand it, we do not molest them in their present rights.

Mr. LENROOT. When the Government authorizes a lease subject to any prior valid existing rights, the lessee takes subject to those rights, and then any prior claimant could go into court, and if he succeeded in establishing in court that prior valid existing right he could oust the lessee.

The CHAIRMAN. You are assuming that we give him a right which he does not now have; is that what you have in mind?

Mr. LENROOT. This is what I have in mind: The Government will continue to own these lands, and the prior claimants would have no cause of action against the Government——

The CHAIRMAN (interposing). Except that he could pursue his claim up to patent.

Mr. LENROOT. He could pursue his claim up to patent. Without this language it might be held, it seems to me, that the lessee stood in the same relation that the Government did, and therefore the prior claimant could not pursue the lessee; but if he leased the lands subject to any prior valid existing rights, that would change the situation, and the lessee would not stand in the same relation as the Government, but would stand in the same relationship to the claimant that a patentee would.

The CHAIRMAN. If you are right about your construction I would be with you, because I do not think we ought to give these claimants the right to go into the local courts there for such a purpose, and if that is the effect of the language I would agree with you. In the conferences we thought of the construction which was given by Mr. Finney, and I do not think anyone anticipated the effect that you have suggested.

Mr. LENROOT. I suggest that this is quite an important matter. Now, I want to ask another question. In the withdrawal of these lands by the Executive was any exception made as to the pending claims?

Mr. FINNEY. The original withdrawal contained no express exception relative to existing claims. On the 16th of May, 1907, a circular was issued from the Department of the Interior which stated that claims unadjudicated prior to withdrawal of the lands from entry might be perfected, and it contained some directions about the method of procedure. I might say that since that time the department has taken the attitude that the withdrawal did not defeat any prior valid existing claims.

Mr. LENROOT. Can the legislative power cut off these claimants from perfecting title to their claims?

Mr. FINNEY. I have been looking into the general subject lately and have considered a line of decisions from the case of Frisbie *v.* Whitney, reported in the Ninth Wallace, down to some very recent decisions by both the Supreme Court and the circuit courts, and I have no doubt of the power of Congress by legislative enactment to deprive a public-land claimant of his inchoate right in such lands and to devote the lands to public use. I think they can not take land away from one claimant and give it to another, but you can take it away from a claimant and devote it to public uses. But where a land claimant has acquired a full equitable title by full compliance with the law under which he is claiming, or in an unadjudicated claim where he has earned his right to patent, I think the decisions would indicate that he can not be deprived of that equitable title or vested right.

Mr. LENROOT. That is, when the title gets away from the Government?

Mr. FINNEY. To illustrate, where a homestead claimant has complied fully with the law in respect to cultivation, residence, and improvements, has made his proof and received a final certificate, he then has an equitable title.

Mr. STOUT. But up to that time the Government can take it away from him?

Mr. FINNEY. Yes, sir.

The CHAIRMAN. I would like to know what percentage of these claimants have complied with the law to the extent of submitting proof and tendering fees, or have complied so fully as to bring themselves within the line of decision to which you have referred. Do you know what percentage of them have earned patents?

Mr. FINNEY. I do not think I could answer that.

Mr. GRAHAM. The decisions indicate, even if they do not decide, that when the lands are to be devoted to a public use the Government may appropriate them and ignore the inchoate right of the entryman. Now, would you construe the purposes of this bill to contemplate such a public use as would justify the appropriation of these lands?

Mr. FINNEY. No, sir; because this bill proposes—I believe I would like to amend that answer; I believe I might change my answer to yes.

Mr. GRAHAM. Does this bill provide for a public use of the coal?

Mr. FINNEY. Yes, sir; and it reserves the title in the United States.

Mr. GRAHAM. And it provides for a utilization of the resources through a system of leasing. It seems to me doubtful whether that is a public use, unless the Government proposes to use the coal in its own business, as for the Navy. Would the use by the Navy be such a public use?

Mr. FINNEY. Not according to a leasing act. I would not think that would be such a public use.

Mr. SINNOTT. Is not that a matter which could be declared by proper legislation?

Mr. GRAHAM. Within certain limits, but they could not say that giving it to you would be a public use. It must be in conformity with reason.

Mr. FERGUSSON. The legislature has the power to declare that it is a public use.

Mr. GRAHAM. Within certain limits, but the legislature can not say that twice 2 are 5.

Mr. STOUT. In other words, could the Government take a valid existing claim and lease it regardless——

Mr. RAKER (interposing). They do that right along. That is done every day. That is certainly done in regard to reservations in my district. In cases where the homesteader has filed his claim and made final proof, the land is withdrawn for some purpose, as for a reservoir site.

The CHAIRMAN. But that is a public purpose.

Mr. RAKER. It is then held for the purpose of renting it to the public or converting it to the most beneficial use. Now, is it not a fact that in the two reservations specified in section 2 of this bill no claim could be located, no matter how valid it might be?

Mr. FINNEY. Section 2, of course, contemplates a use that is indisputably public.

Mr. RAKER. And a claimant in either of those two reservations could not perfect his claim?

Mr. FINNEY. He could not hold it unless he had proceeded heretofore and secured a vested right.

The CHAIRMAN. Where does that right begin and end, respectively? In other words, when does the claimant pass out of the realm of inchoate rights into that of vested rights?

Mr. FINNEY. Generally speaking, it is when the public-land claimant has performed all the acts required of him to perfect his title and has submitted his proof thereof to the General Land Office.

Mr. RAKER. He must have complied with all the requirements of the law, he must have made a proper filing, submitted proper proof, and complied with all the other requirements of the law before he could acquire such a right. Then, in the two reservations mentioned in section 2, unless the claimant had in all particulars complied with the law, he could not, under the provisions of this bill, proceed to perfect his claim?

Mr. FINNEY. I think that is correct.

Mr. BROWN. I would like to call attention to the provision in section 6 which provides that—

no person, association, or corporation, except as hereinafter provided, shall be permitted to take or hold any interest as a stockholder or otherwise in more than one such lease under this act.

Then provision is made—

except that any such ownership and interest hereby forbidden which may be acquired by descent, will, judgment, or decree may be held for one year and not longer after its acquisition.

Now, a longer period of time might be required in which to dispose of such a holding. Are you satisfied that that would not be a hardship on a great many people? A person under a will might hold a one-fifth or a one-tenth interest, and the coal mine might or might not be a profitable investment. It might be that the money could not be obtained from the sale of a one-fifth interest or a one-tenth interest, and it occurs to me that that might operate as a hardship to have that interest revert to the Government at the end of one year. Is not that rather confiscatory?

Mr. FINNEY. It might be all right to give a longer period.

Mr. BROWN. You might amend line 14 in section 6. I admit that there should be some limit fixed, but is not one year too short a time? An estate could not be settled and wound up very well in such a short time.

Mr. FINNEY. I do not know that that question was raised in any of the conferences.

Mr. GRAHAM. To what period does the word "acquisition," in line 14, apply?

Mr. BROWN. I do not know. Would it be after the probate of the will and the settlement of the estate?

Mr. FINNEY. As soon as it is finally determined.

Mr. GRAHAM. Suppose the holder did not acquire it in that sense until after the estate was probated and the administrator or executor discharged. In that case, the time would be long enough, but, if, on the other hand, he acquired it on the death of the testator, I think your point is well taken.

The CHAIRMAN. He would not acquire it until the estate was probated.

Mr. GRAMAM. You would have to define the word "acquisition" before you could prove that your point is well taken.

Mr. BROWN. My question was this: Suppose an estate is settled and an heir or legatee receives a fifth or a tenth interest. Now, if the actual title to that fifth or tenth interest did not pass then, there would be only one year in which to dispose of it.

Mr. RAKER. It is after the acquisition. I think that refers to one year after the decree of the probate court. Now, if there is no title out, you could not comply with this in one year. This applies only after the acquisition of the property or after the final decree of the probate court.

Mr. BROWN. I suppose it would be after the final decree, but is one year after that final decree a sufficient time in which to dispose of property not readily salable?

The CHAIRMAN. The purpose of that was to prevent interlocking directorates, and the use of stool pigeons, dummies, and such devices.

Mr. FINNEY. That was what was intended, and the question is only one of extending the time.

Mr. BROWN. I would simply suggest that the committee take that into consideration—that is, whether a longer period of time should be allowed.

Mr. RAKER. That same provision was discussed in connection with the reclamation act. Mr. Finney, I call your attention to the language, on page 3, in line 5, to provide for the leasing of such lands—

to any person above the age of 21 years, who is a citizen of the United States, or has declared his intention to become such, or to any association of such persons, or to any corporation organized under the laws of the United States or of any State or Territory thereof.

That, I take it includes naturalized citizens and all other citizens, does it not?

Mr. FINNEY. It would mean citizens and those who have declared their intention to become such.

Mr. RAKER. And the language, "or to any association of such persons, or to any corporation organized under the laws of the United States, or of any State or Territory thereof," would permit any corporation which was practically owned by foreigners, or in which foreign people controlled 90 per cent of the capital stock, to control the situation.

Mr. FINNEY. That language would permit such corporations to obtain leases.

Mr. RAKER. In other words, a corporation of New Jersey or New York that has 90 per cent of its capital stock in the ownership of a foreign corporation or of foreign people would be able to obtain a lease.

Mr. FINNEY. That is true, and that is true under our present general mining laws and other laws under which corporations acquire public land.

Mr. RAKER. I understand that the law provides that the individual lessee must be a native-born citizen or naturalized citizen, or must have declared his intention to become a citizen?

Mr. FINNEY. Yes, sir; and under our laws the corporation is a citizen of the State where it is organized.

Mr. RAKER. I am coming down to the question of the ownership of the corporation by those who are not citizens. To avoid all complication, ought not this provision to be restricted to corporations owned by American citizens?

Mr. FINNEY. I do not think so. The corporation must be organized under the laws of the United States or of any State or Territory thereof, and it is therefore a citizen of the United States. It is organized under our laws and it is presumably subject to the control of the provisions of our State laws. The mere fact that a large part of the stock of the corporation may be held by foreigners does not seem to me a sufficient reason to deny to them the right to lease these lands, because primarily the purpose of the bill is to secure the mining of the coal. The secondary purpose of it, of course, is to give whatever advantage may accrue to our own citizens. As a matter of fact, it would be a difficult matter to ferret out the stockholders of the corporations.

Mr. RAKER. The difficulty of the matter could be obviated. Now, in the case of individuals you limit or restrict the right to citizens of the United States native born or naturalized, or to those who have declared their intention to become such citizens. Now, why could you not make the same restriction as to corporations, if you wish to avoid corporation control or interference from outsiders?

Mr. FINNEY. My thought was to follow the policy that seems to have been followed by Congress heretofore.

Mr. RAKER. There is no question in your mind as to the right of Congress to make that restriction, is there?

Mr. FINNEY. I think Congress has the power to do it.

Mr. LENROOT. I would like to call your attention to section 7, lines 22, 23, and 24, where it reads:

> For all the purposes of this act stock in a corporation owning or holding such a lease shall be deemed an interest in the same.

I suppose the intention is that ownership of stock in a corporation shall be deemed an interest in the lease? Is that true?

Mr. FINNEY. Yes, sir.

Mr. LENROOT. Section 7 further provides:

> That any person who shall purchase, acquire, or hold any interest in two or more such leases, and any person who shall knowingly sell or transfer to one disqualified to purchase, or, except as in this act specifically provided, acquire any such interest, shall be deemed guilty of a felony.

Do you not think that is a great hardship upon an innocent holder of stock who innocently secured an interest in another lease to make him guilty of a felony, and do you not think it would prevent the formation of corporations for this purpose with this very severe penalty here? The next section seems to take care of all those who would be directly responsible.

Mr. FINNEY. Of course, the purpose is to prevent what otherwise might be attempted, and it was thought the mere forfeiture of the lease would not be sufficient penalty. In other words, people would take chances on that sort of punishment; but if the penalty should be made a personal one and a severe one, the likelihood is they would not take any chances, and for that reason this was defined here as a felony.

Mr. LENROOT. The only possible criticism I have is whether it should be extended to the mere ownership of stock in a corporation, the stock owner being entirely innocent—extended to the man who did not know. Does it do that?

Mr. FINNEY. It evidently does.

Mr. LENROOT. The point I wanted to make was in regard to the extent of the penalty and to whom it may apply.

Mr. FINNEY. I am inclined to think it would apply to a man entirely innocent.

Mr. LENROOT. It says that any person who holds interest in two or more such leases shall be guilty of a felony, and then it extends it to the stockholder, who may be entirely innocent, and makes him guilty of a felony as well.

Mr. FINNEY. I think possibly that should be changed so as to provide that if he does it knowingly he shall be guilty.

Mr. FERRIS. It does say that. In section 7, line 17, it says "any person who shall knowingly sell or transfer to one disqualified to purchase."

Mr. RAKER. The word "knowingly" is also used in line 4 of section 8.

Mr. LENROOT. That is all right. That reaches all the guilty parties.

Mr. FERRIS. I think we ought to do all that we can in the matter of preventing these interlocking corporations acting as stoolpigeons and forming combinations of that character.

Mr. THOMSON. I would suggest that the language at the beginning of section 7 read this way:

That any person who shall purchase, acquire, or hold any interest in two or more such leases or who shall knowingly purchase or acquire any stock in a corporation having an interest in two or more such leases.

Mr. FINNEY. That might be all right. I would also add the word "hold" in that. I think possibly that would be a desirable amendment, because I do not think an innocent person should be punished by a three years imprisonment and a fine of $1,000.

Mr. LENROOT. I just want to call your attention to one thing more, Mr. Chairman. On page 6, lines 5 and 6, it reads:

And conditions may be made by the Secretary of the Interior as may be authorized by law at the time of expiration of such periods.

My query is as to whether that implies an express authorization of law with reference to these particular leases, or only as to a general power on the part of the Secretary of the Interior.

Mr. FINNEY. I had in mind general power. The thought was that possibly 20 years from to-day conditions might change so radically that Congress might desire to impose new terms and conditions.

Mr. LENROOT. My query is whether this might be subject to the other construction, that Congress itself must act upon a specific case.

Mr. FINNEY. I think not.

Mr. FERRIS. I am not so sure you are right about that. The inference you seek to draw is, might not the Secretary within the 20-year period say to Congress, what do you want me to do? Is that desirable or not?

Mr. LENROOT. I do not think it is; I think we ought to leave it to the Secretary.

Mr. FERRIS. Of course, 20 years having elapsed, Congress might want to make new regulations.

Mr. GRAHAM. If you should change it and Congress took other ground, it would stand on that ground eventually.

Mr. FINNEY. That is a limitation on the part of the Secretary, also. After the words "Secretary of the Interior," cut off the balance of it, and then leave it wholly to the Secretary of the Interior.

Mr. LENROOT. Would not this language give the other construction: As he may have authority by law to make?

Mr. FERRIS. That would not improve it any. Some people thought that Congress ought to have the right to supervise those regulations.

Mr. FINNEY. They would have that right anyway.

Mr. GRAHAM. They could not deprive themselves of that right.

Mr. RAKER. I think this would cover it: Strike out the words "as may be" and then add the words "unless authorized by law at the expiration of such period," and then add "unless Congress desires to take no action."

Mr. FERRIS. Strike out "as may be" and insert in lieu thereof "unless otherwise."

Mr. LENROOT. And still leave to Congress——

Mr. RAKER (interposing). Otherwise the Secretary of the Interior goes right along and acts under the law as it now exists. I think

my suggestion gives it a great deal better termination and gives Congress still control if it desires.

Mr. FINNEY. Unless otherwise provided.

Mr. RAKER. Yes.

Mr. FINNEY. That would be entirely satisfactory to the department.

Mr. KENT. I think the word "directed" should be inserted, and then Congress would have something affirmative, in order that the Secretary of the Interior should not have full authority.

Mr. FERRIS. I think the word "authorization" would cover that.

Mr. RAKER. I would suggest that it read "unless otherwise provided by law at the expiration of such period."

Mr. FINNEY. I want to say that it was my thought to protect the lessee, to give him to understand that there might be a readjustment at the end of the 20-year period, but only such readjustment as might be authorized by Congress.

Mr. RAKER. Now, let us go back to that other proposition in regard to the foreign corporations. My attention has just been called to the fact that the British Government has had issued rules and regulations in regard to its coal lands, that no one except its own subjects shall participate in handling those coal lands, and I would like to have the committee hear about that and hear Mr. Holmes when he goes upon the stand. I understand, Mr. Finney, there are no objections, legally speaking, if Congress desires to deal with that subject. Is that right?

Mr. FINNEY. Yes, sir.

Mr. FERRIS. There are two sides of that we should consider. First, if you put the limitations on capital too severe you make it pretty hard for those residing in the territory where they desire capital. On the other hand, the high public ground on which we might all proceed, to let no one else control our fuel supply, might involve us in some kind of hardship or disaster. I saw the clippings you had in mind from the Canadian papers, which said that England had made up her mind not to allow any outside people to lease their fuel supply, that they might need it in time of war.

Mr. GRAHAM. But even if the corporation—the stock of the corporation—is owned by foreigners it would still be American, and why not subject to the laws of the United States in time of war or in time of peace or any other time? It would be, of course, and could not the output be controlled just as much in the one case as in the other? Suppose a corporation should be organized and take one of these leases to operate a mine in Alaska, and every stockholder in the corporation is an Englishman or a Japanese, or anybody else, but the corporation itself is an American corporation, why would not it, as an American citizen, be subject to every law and regulation which an individual American, who was operating under the same lease, would be subject to? Yet all the advantages they could possibly get out of it would be to take the net profits.

Mr. FERRIS. The Interstate Commerce Commission could take hold of a domestic corporation even though the stockholders were foreigners, with the same ease as though they were all American.

Mr. GRAHAM. The legal entity of the corporation would be that of an American corporation and would be amenable in every way to the American law. I do not see what advantage they would gain or what

disadvantage we would be put to, except the profits would go to foreigners instead of to citizens.

Mr. CHURCH. I understood that was because the Government might need these supplies in time of emergency.

Mr. GRAHAM. And be controlled by American citizens.

Mr. CHURCH. If they were controlled by foreigners living in a foreign country they would control the corporation as to the output, and perhaps would not be so friendly toward the Government, and might refuse to permit this oil or coal, or whatever it was, to be sold to the American Government.

Mr. GRAHAM. If you had that lease in your name you might do the same thing. What would the Government do in that case?

Mr. CHURCH. I suppose the theory was the American citizen would be more friendly to the American Government and would be more willing to assist the American Government in time of emergency.

Mr. GRAHAM. The law would be strong enough to stand on its own leg without any violent assumption.

Mr. RAKER. We passed a law that no one but a citizen or a party who declared an intention of becoming a citizen should go upon this land.

Mr. GRAHAM. He is subject to our laws just as much as our corporation is and no more, but if he were a foreigner he could not be. He would be beyond the reach of our laws, and in that event we could not deal with him by law, because we could not get him into court. But here is a corporation.

Mr. FERGUSSON. Except through the directors or stockholders composing the corporation.

Mr. FERRIS. Their output is subject to the provisions of the interstate-commerce law.

Mr. GRAHAM. I think the directors should be citizens.

Mr. KENT. Here we have a felony charge against people who knowingly combine. That would not act against a foreign corporation, where all the stockholders were foreigners and outside and the directors were outside our jurisdiction. We could not get after them for felony.

Mr. GRAHAM. You could not put the corporation in the penitentiary, but you could put the officers there.

Mr. JOHNSON. I would like to ask Mr. Finney a question. What courts are there in Alaska other than the district courts? The district courts are the Federal United States courts?

Mr. FINNEY. Yes.

Mr. JOHNSON. Are there other Territorial courts?

Mr. FINNEY. I presume there are some local minor courts.

Mr. JOHNSON. You have no lower courts now?

Mr. WICKERSHAM. No; except those provided by Congress.

Mr. JOHNSON. What do you do with the fellow who gets drunk?

Mr. FINNEY. Bring him before a commissioner as justice of the peace or before a municipal magistrate of a town.

Mr. JOHNSON. Is there any distinction between Federal courts and State courts?

Mr. FINNEY. No; there is not. The same court has both jurisdictions. The district court in Alaska has general jurisdiction, having State and Federal jurisdiction both.

Mr. JOHNSON. And at how many different places does this court meet?

Mr. FINNEY. There are four judicial divisions in Alaska—four courts.

Mr. JOHNSON. What I am getting at is this: In all controversies between the Government and the lessee the district court is given jurisdiction. Now, would that not work a hardship in a great many cases, especially with these smaller lessees—men holding 10-acre tracts—if they are compelled to go a long distance to bring their case in the Federal court or in the district court?

Mr. FINNEY. There is no other court to bring it in.

Mr. JOHNSON. You can not remedy that?

Mr. FINNEY. No.

Mr. FERRIS. We have only a few minutes' time remaining, and I think we had better hear from Dr. Smith next.

STATEMENT OF MR. GEORGE OTIS SMITH, OF THE UNITED STATES GEOLOGICAL SURVEY.

Mr. SMITH. Mr. Chairman and gentlemen of the committee, I think the members of the committee know my general interest in the leasing proposition, and it goes without saying that I am heartily in sympathy with the purposes and provisions of this bill. When it comes to some of the details regarding the coal lands of Alaska, any answers that I might give to your questions would be what I have learned from Mr. Brooks, who is the gentleman in charge of our geological work in Alaska, and I think it would be more profitable to you to get that information from Mr. Brooks than from me.

Mr. FERRIS. Then, at your suggestion, we will hear from Dr. Brooks, unless there is something you want to say to us.

Mr. SMITH. In regard to the general proposition of Alaska?

Mr. FERRIS. You have become convinced, have you not, that the only solution of this Alaska problem is the leasing of these coal lands?

Mr. SMITH. Yes.

Mr. FERRIS. And there is no hope for those who cling to the old theory of these lands being owned by private ownership?

Mr. SMITH. I do not think it would be practical to pass other legislation, and I do not believe we would get the results under any other system that we can under the leasing system if it is made to conform to local conditions.

Mr. FERRIS. Then, in the last analysis, it resolves itself down to the proposition of what particular kind of an Alaskan coal-leasing bill we should pass?

Mr. SMITH. I think it does.

Mr. FERRIS. Is that not the belief in every arm of your department?

Mr. SMITH. I believe we to-day are practically one mind on that matter. We do want to have legislation that recognizes local conditions in Alaska, providing for the small man and the local miner as well as for the large corporation and what might be called commercial mining, and what we want most of all, and I believe we must recognize it, is the just demands of the Alaskans—that we have a

speedy termination of the present régime of nondevelopment and secure the utilization of these coal deposits.

Mr. FERRIS. Now, one word further. Assuming we can pass a leasing bill, which I hope we can, then the next step leads off with the classification proposition. How long have the Alaska people to be held up awaiting this classification?

Mr. SMITH. The classification element, I think, is only incidental. We all know, as a result of the work for the past 15 years of the Geological Survey in Alaska, where the coal deposits are. We know at least enough to begin with, so that we can say we know the lands which are valuable for these deposits of coal. The next step is to survey those for the purpose of transferring the title under leasehold. There is a possibility of some delay, but I think the purpose of the department and the purpose of this legislation is to concentrate on the two more important fields, the Matanuska and the Bering River.

Mr. FERRIS. They have been surveyed before?

Mr. SMITH. They have been surveyed geologically, but not by the General Land Office.

Mr. FERRIS. They would have to be surveyed before a schedule of tracts could be made?

Mr. SMITH. I think Mr. Brooks could give you better information as to that, and as to what stage the survey is in, and when results could be expected better than I can.

Mr. GRAHAM. There were some partial surveys made for the purpose of making some locations up there, but I suppose you would ignore them.

Mr. SMITH. There were some surveys made in the nature of private surveys, and from that surveys filed in connection with existing claims, and those surveys are represented by monumenting on the ground. It is a question of whether some use should not be made of them.

Mr. GRAHAM. Would you only go over the ground and verify these surveys, or make your own survey?

Mr. SMITH. The idea is that the survey shall be the same in accordance with the rules and regulations governing the survey of public lands, but the classification surveys by the Geological Survey have been made, and this last summer there was some work done in the Matanuska field supplementing earlier work by the survey department.

Mr. FERRIS. Just as a rough estimate, what would you say would be the time, the earliest time, that the Secretary could offer for lease any Alaska coal fields if a bill should be passed and become a law at this session of Congress?

Mr. SMITH. Again I would rather defer to my colleague.

Mr. LENROOT. Just one question. The bill does not touch the question of the disposition of the output, and neither does it seem to authorize the Secretary to deal with that question in inserting provisions in the leases. In any event, and as I remember, the Secretary's idea was the lease should depend upon or relate to some extent to the disposition. Do you not think it would be wise to authorize the Secretary to have some control over that question in the making of leases?

Mr. SMITH. One solution that has been suggested of that problem has been to give the Interstate Commerce Commission jurisdiction, because it would be a matter concerning transportation and sale of this product away from the mine.

Mr. LENROOT. Of course, there can be no question of our power in the lease itself to make such safeguards. There might be some question as to how far the Interstate Commerce Commission could go in fixing prices.

Mr. FERRIS. There is an omnibus clause for such other provisions as are needed for the protection of the interests of the United States.

Mr. LENROOT. If it read "interests of the United States or its people," it would be different. I think the interests of the United States would refer to its governmental interests rather than the welfare of the people of the United States.

Mr. KENT. Is there anything to prevent the lessee from selling coal to the United States Government in time of war?

Mr. SMITH. I would say that that would come under that provision for the protection of the interests of the United States. That could be inserted in the lease.

Mr. FERRIS. In the regulations?

Mr. SMITH. Yes; under section 12.

Mr. RAKER. How have you arrived at the acreage that should be included in these claims—from 40 up?

Mr. SMITH. Forty simply as a minimum, because that is the legal subdivision in the public-land surveys, and then the maximum as the estimate of what is needed for a large operation by a corporation which could thus mine the coal at low cost.

Mr. RAKER. That would be up to the Secretary of the Interior to make it 40 or 80 and from that on up to the maximum of 2,560 acres?

Mr. SMITH. Of course the acreage would bear some relation to the thickness of the coal fields.

Mr. RAKER. That would be entirely within the discretion of the Secretary of the Interior whether the claim should be 6,040, or 80, or 2,560 acres?

Mr. SMITH. I understand—within those limitations.

STATEMENT OF DR. ALFRED BROOKS.

Mr. BROOKS. I am the geologist in charge of the Division of Alaskan Resources of the United States Geological Survey, and have been in the service about 19 years, and have been working in Alaska about the last 16 years.

Mr. FERRIS. Have you had an opportunity to read this bill?

Mr. BROOKS. I read it somewhat carefully, but did not study it very exhaustively.

Mr. FERRIS. Do you desire to speak in detail of the bill, or of general conditions?

Mr. BROOKS. I think that probably if it suits the committee best I would sooner have them ask questions.

Mr. FERRIS. You have no independent statement to make in addition to what the Secretary has said?

Mr. BROOKS. No; I do not think I can think of anything additional. Dr. Smith has left me the residuary legatee of this question of the length of time for which a coal lease should be granted after this bill

was passed. I think I might say something of that. For example, in the Bering field and in the Matanuska field there have been a large number of surveys made by the mineral surveyors holding their commissions from the surveyor general and approved by the surveyor general of Alaska. They are private surveys, but they received official approval. Those surveys that have been rejected, of course, are still available. The outlines of these 160-acre tracts are marked on the ground, and I think most of these surveys were executed with a great deal of care. If this law provided that these surveys available could be used, I believe that the lease could be granted for some of these coals almost at once, because I think the Government has sufficient information as to the location of the grant from descriptions as to not require any further surveys as to the tracts. It would also have the advantage of not making it necessary to survey the whole coal field, which is going to be very expensive. Where these private surveys are available and have proved to be accurate, if accepted it would save money and time.

Mr. FERRIS. Do you think that such a provision as that could be incorporated in this bill?

Mr. BROOKS. I presume this first clause of the bill does not authorize any such procedure.

Mr. FERRIS. It makes no reference?

Mr. BROOKS. No. It seems to me it would be desirable to incorporate that to save time.

Mr. FERRIS. Do you think it would be safe for the Government to adopt private surveys?

Mr. BROOKS. You understand, these surveys were made by the men holding commissions as deputy mineral surveyors and were approved by the surveyor general, and I might say I am personally familiar with a large number of those surveys made by high-class engineers and they are absolutely accurate. Before accepting all the surveys I would suggest that a certain amount of inspection work should be done.

Mr. FERRIS. What per cent of the Bering field has been surveyed with the care and pains you now speak of?

Mr. BROOKS. I can not say offhand, but I would estimate 60 or 70 per cent.

Mr. FERRIS. And how much of the Matanuska field?

Mr. BROOKS. A much smaller per cent in the Matanuska field—probably not over 10 per cent.

Mr. FERRIS. And there has been no reliable surveys made anywhere else?

Mr. BROOKS. You do not refer to the topographic surveys?

Mr. FERRIS. No; for the purpose of scheduling these lands for Alaska?

Mr. BROOKS. I could not say as to that. There have been other claims entered, and some of them have been surveyed, but I am not familiar with them enough to make a definite statement.

Mr. FERRIS. Just a word further. While there is nothing in this bill specifically authorizing the department to adopt any of these surveys that have been already made, at the same time I assume there is nothing to prevent them from doing so. What would you say as to that proposition, leaving the matter open and letting the department adopt what they want and reject what they want?

Mr. BROOKS. That should be the policy, but I had some objection to this clause at the end of section 1, which says: "That such surveys should be executed in accordance with existing laws and rules and regulations governing the survey of public lands." I believe that it is necessary to survey all these lands stirctly in accordance with the rectangular scheme of the Land Office, and no departure from that should be allowable.

Mr. GRAHAM. Were the surveys made by the private parties made on a uniform plan? Did they have a correct starting point?

Mr. BROOKS. Not all of them, but considerable groups of claims there would be surveyed on a uniform plan.

Mr. GRAHAM. Those lines would not conflict?

Mr. BROOKS. Yes; they would in some instances conflict; but I do not think that would be a serious matter, because this law provides the smallest unit should be 40 acres, and where necessary this could be subdivided into 40 acres, and I think this is simply a matter of description which will have to be taken care of.

There is another point in regard to this, and that is, in the Bering field, at least—certainly in the Matanuska field, to a large extent—the actual coal lands are not agricultural lands, and have practically no value except for the coal and some timber available for mining purposes. So in these two instances the proposed surveys would have no other purpose than the leasing of the coal, and therefore I think in that case they would do no harm. Now, in the Anana field, on the other hand, south of Fairbanks, the lands have agricultural and grazing value, and I think there no such procedure should be undertaken—that we should have the land system of surveys in order to provide for the eventual use of these lands for agricultural purposes.

Mr. GRAHAM. Is it not true that in regard to these private surveys the purpose was to get the cream of the coal within a particular survey, or within particular lines, and for that purpose they ran the lines somewhat irregularly, so far as the points of the compass are concerned. The point I want to get at is, when you survey the field as a whole would it not be necessary, in the interest of reasonable economy, to run different lines and make different divisions of the coal?

Mr. BROOKS. I think Judge Wickersham will bear me out in this, as it is my recollection that all the lines have to be run north and south and east and west by law.

Mr. GRAHAM. So that they really have to take the bitter with the sweet?

Mr. BROOKS. They have to.

Mr. GRAHAM. And the lines laid out would be parallel lines?

Mr. BROOKS. They are parallel, though they may not seem so on a projection from one part of a field to another. You understand the field is divided up, in some instances, by lakes, and surveys made on one side of a lake might not correspond with the group of surveys made on another side of the lake.

Mr. LENROOT. Do I understand the bill provides that practically all the coal lands in the Bering coal field would be reserved by the Government in this bill?

Mr. BROOKS. No, sir. There is a reservation of about 35,000 acres.

Mr. LENROOT. How many acres are there?

Mr. BROOKS. Approximately it is 50 square miles.

Mr. FERRIS. Thirty-five thousand square miles?

Mr. BROOKS. Thirty-five thousand acres, approximately. They have about a hundred square miles of actual coal bearing.

Mr. LENROOT. This bill makes no appropriation as to providing the money for these surveys. There would have to be an appropriation at this session to carry out the purpose of the bill?

Mr. BROOKS. I think the money provided annually for the survey of public lands of Alaska from the General Land Office would be available for this purpose. I think that appropriation is $50,000. It would not be enough.

Mr. FERRIS. In your estimation, how much more ought they to have?

Mr. BROOKS. Roughly, if we were to survey the Matanuska and Bering River fields without accepting these private surveys at all and make a new survey there, it would probably cost at least $200,000, and possibly $300,000. It is just a rough estimate, because the country is very rough and the climatic conditions are such that the work would go very slowly. Of course if you are going to cover the surveys over all the coal fields of Alaska it would take more money, but the important part of the surveys could be made for some such sum—$200,000 or $300,000.

Mr. BROWN. I did not quite catch the number of acres of coal lands in the Bering field.

Mr. BROOKS. About 35,000 acres.

Mr. BROWN. How many acres in the Matanuska field?

Mr. BROOKS. About double, according to our latest surveys.

Mr. BROWN. About 100 square miles?

Mr. BROOKS. About 100 square miles in the Matanuska field and about 50 square miles in the other field. These are the two high-grade fields. The total amounts to about 12,000 square miles of coal bearing, or land which is probably coal bearing, only about 1,200 of which we have information enough to know is workable coal.

Mr. BROWN. There are pending about 240 cases before the General Land Office of claims in the Bering River field of a maximum of 160 acres each. If those claims are all adjudicated in favor of the claimants, that would be 38,400 acres, or practically the whole field. Therefore, ought we not to provide an early settlement of these cases in order that such claims as are not patented to these claimants may be leased with all possible speed?

Mr. FERRIS. It seems to me that is highly important from every viewpoint. You know the trouble up there has been as to what is the best to be done. There have been lots of fraud there, and that has caused the department to send their agents up there, and these claims have stood there practically without any attention being given to them.

Mr. GRAHAM. There must be something wrong with your figures, Mr. Brown, because you have more acres exempt now than there are in the field altogether.

Mr. FERRIS. To use the figures of Mr. Finney a short while ago, altogether there were 1,164 claims; 596 have been canceled, 2 of them patented, and 566 of them remain to be adjudicated.

Dr. BROOKS. In my opinion, authority should be given to the President in more general terms. If it is desirable to have 10,000 acres, or, preferably, a certain tonnage of coal for Navy use, the President should have the authority to withdraw the coal lands for that purpose wherever they may be, and it seems to me that would be better than to specify so much in one coal field and so much in another.

The CHAIRMAN. You think it would be better to fix a maximum area that could be withdrawn?

Dr. BROOKS. Yes, sir.

The CHAIRMAN. Because there would be objection to giving him unlimited right, and he would not want it.

Dr. BROOKS. Taking the Bering River field, if you find any Navy coal there I do not think you will need 5,000 acres, because there is an enormous thickness of coal there.

Mr. RAKER. May I interject right there. This report does not pretend to say, does it, that this coal up there is not high quality that can be used for auxiliary purposes, such as for transports?

The CHAIRMAN. The report referred to—this may be a little outside of the question—a letter from Josephus Daniels, which said that 500 tons of it had been mined and used on the *Maryland*, and it proved only 43 per cent up to the standard. Later a letter came to the effect that 50 tons were carried over to Annapolis and there tested, and the report was 75 per cent of the standard, and another letter came from Josephus Daniels which recited the number of battleships and cruisers and auxiliaries, all of which were using it.

Mr. RAKER. If we are going to examine a lot of this coal for Navy purposes, and the coal is not fit for Navy purposes, we are legislating on a matter here that seems to me foolish.

Mr. GRAHAM. Is it wise to reserve some of it for Government use?

The CHAIRMAN. The Navy Department might find better coal in the Matanuska field, which has not been tested at all.

Mr. GRAHAM. We will have to continue using coal, and they use it when they are not in battle. It does not have to be up to the highest standard.

Mr. RAKER. That is the reason I asked the question I did. Could not this coal be used for the purpose you suggested, and very effectively?

Mr. GRAHAM. Yes; and there are a great many purposes for which the Government could use it.

Mr. CHURCH. I think I heard on the floor a great deal of discussion as to the suitability of this coal for battleships.

The CHAIRMAN. That is true.

Dr. BROOKS. I would like to make this suggestion in regard to it: The Navy, of course, needs a very high grade of coal; and it seemed to me it would be largely a matter of chance in a field where you have a great many beds that the first bed you opened should meet this high Navy requirement. We have not done that in other fields. I never tested the coal fields on the Atlantic seaboard; and finally, after a great deal of discussion, they decided on certain beds of coal in West Virginia that came up to their standard. But if they started out in the Maryland field and started mining, and adopted the first one that seemed to be best from surface indications, it might be assumed then that the Georges Creek coal was not suitable.

The CHAIRMAN. If the President has the right to withdraw and it appears the Navy does not need it, it can undoubtedly be leased to those who would take it, even granted that the coal is not what it ought to be. Now, what is the next coal field you have?

Dr. BROOKS. I did not give the total figures here on the Matanuska. The total area of the field is about 100 square miles. Our surveys have not yet been entirely adjusted, so I can not give the figures. I would suggest that this table be put right into the record.

The CHAIRMAN. I thought that could be done, but at the same time this is new to all of us.

Dr. BROOKS. That gives the square miles and the acres. The total acreage in the Matanuska field is 64,000, which is about double that of the Bering field. Those are the two important fields in Alaska, the only two fields over there that has high-grade coal.

Mr. KENT. Is it horizontal?

Dr. BROOKS. I would not want to undertake to say that it is. It is very much covered up. It is a field in which there are some very heavy gravel deposits, and the exposures are very few.

Mr. KENT. How thick are the veins?

Dr. BROOKS. The same as in the Bering field—about 20 feet or more.

Mr. KENT. Do you know whether there is more than one bed imposed on another?

Dr. BROOKS. There are several beds, I think. I do not want to say how many, but there are a number of beds that we know of.

Mr. KENT. Do the qualities of the coal differ in the different beds, are are they pretty near uniform?

Dr. BROOKS. In a general way the lower grades of the coal occur nearer the coast, and as you go into the mountains it becomes better, so it is a matter of geographic distribution. Do you want me to go on with these other fields?

The CHAIRMAN. If you please, and make any comment, if you desire.

Dr. BROOKS. I have arranged them more or less geographically from here on. There is a little coal in the southeastern part of Alaska which is of very little importance; the total area is only about 10 square miles.

The CHAIRMAN. Do you have an estimate of the tonnage there?

Dr. BROOKS. No, sir; the beds are small.

The CHAIRMAN. It is all lignite? It has to be used in lump if at all?

Dr. BROOKS. Yes, sir; on the eastern peninsula there is a very extensive coal field, which is all lignite. The total area of known coal lands is 282 square miles, but there are probably many times that many square miles. No one knows what the tonnage is, but it is enormous. There are many billion tons. It is right at tidewater.

The CHAIRMAN. Has that any value that would warrant the payment of freight rates from there down?

Dr. BROOKS. I do not believe you could utilize that coal in any way except locally. I think probably the best use to which it could be put would be in the manufacture of electricity.

Mr. KENT. Do you know whether it is available for smelter use?

Dr. BROOKS. No; it is not a coking coal.

On the Alaskan Peninsula, to the southwest, there are some few small fields which aggregate some 29 square miles of bituminous coal

and there are about 31 square miles of lignite. That bituminous coal in southwestern Alaska has been mined but little and used in local canneries.

Mr. KENT. Fish canneries?

Dr. BROOKS. Yes; the salmon canneries. It has considerable value for that purpose. It is not of sufficiently high grade to warrant export, and it probably might be used elsewhere in Alaska if it were not for the better grades of coal which are available elsewhere.

Passing inland, in the Susitna Basin, which is formed by the river that flows into Cook Inlet, the total area of known coal there is 22 square miles, but that is heavily covered with gravel. That is all lignite, so far as we know. That is really on the inland extension of the peninsula.

Mr. KENT. That has not any value for shipment across the Territory?

Dr. BROOKS. It all depends on what you come in competition with. You could not haul it, of course, toward the Matanuska coal field, which lies close to it, and you could not haul it across the divide to the north, because then you come into another lignite field. It is a question of competition.

The CHAIRMAN. The only thing to do is to use it locally?

Dr. BROOKS. Yes.

Mr. RAKER. What good are we going to do with this except to let a man go in there and get the land and do as he pleases with it? What benefit will you get out of Alaska merely by leasing that land?

Dr. BROOKS. I understand the bill here provides for a man practically doing that under that 10-acre system, by which he is permitted to mine the coal on 10 acres.

The CHAIRMAN. Forty acres without royalty.

Dr. BROOKS. Yes; which is practically the same thing, and certainly would be better than the present system, under which he has to make extensive surveys and wait several years before he can get a patent. I do not believe there is going to be any particular advantage in those small mines there under the leasing system.

Mr. RAKER. Is there any coal there outside of these two coal lands which you have mentioned that are affected by the leasing system, which would be necessary?

Dr. BROOKS. Perhaps the most important field, outside of the two near the coast, is the Nenana coal field, which lies 30 to 50 miles south of Fairbanks. That is lignite. There is an enormous quantity of coal there.

The CHAIRMAN. Might I suggest, Mr. Raker, that he has them all there and that we allow him to give them in order. Let us make our comments on each one and see what we have to offer.

Dr. BROOKS. That is the next field we are coming to. The Nenana coal field has an area of 122 square miles, and there is probably an enormous amount of coal which is covered up.

The CHAIRMAN. What town or city is near that field?

Dr. BROOKS. That lies 30 to 50 miles south of Fairbanks. It is on the south side of that valley and Fairbanks is on the north of it. This coal could be used at Fairbanks. In fact, it will have to be used there if the town is to continue, because they are burning up all their wood. Wood is almost prohibitive, so they had best draw on this coal field.

Mr. FERGUSSON. Does wood come in competition with coal?

Dr. BROOKS. This coal is much better than this spruce wood they are using up there now.

The CHAIRMAN. Could not they ship coal over there from Matanuska or Bering, up to Fairbanks, and compete with this lignite?

Dr. BROOKS. No, sir; I do not think they could. They would have to haul it up over the divide, and it would be a question of hauling it several hundred miles.

Mr. RAKER. I am going to ask this question, no difference how foolish it may appear: If this coal is in there and they are using up the wood and they are not giving them any coal for local purposes, what has been the objection to giving those people that live there all the coal they wanted, so they could develop their own country?

Mr. GRAHAM. Ask Congress that question.

Mr. RAKER. I am asking the man that has been in the field there.

The CHAIRMAN. It is all withdrawn. The can not get coal now enough to build a fire in a cookstove.

Mr. RAKER. Has there been any attempt by these vociferous companies to get the coal in that Nanana field?

Dr. BROOKS. I do not think so.

Mr. GRAHAM. That law was passed before these conditions were understood, and there is a blanket law covering conditions that were not understood by Congress when it was made, and they could not distinguish when they did not know. It covered everything with a blanket, as people usually do when they are ignorant about what they are dealing with.

The CHAIRMAN. Undoubtedly it may as well be admitted by all of us that the blanket withdrawal in Alaska, while well meaning, covered lots of land that ought not to have been withdrawn and worked numerous hardships. There is no question about that. Here the people are in Judge Wickersham's home of Fairbanks, with millions of tons of lignite right at their doors, and it can not be used; they can not use a pound of it. No human can justify that. But that is getting beside the question.

Mr. WICKERSHAM. You will continue to do that if you do not look out, because you can not lease that kind of coal.

The CHAIRMAN. Undoubtedly not.

Mr. GRAHAM. Let us take up these coal fields in order.

Dr. BROOKS. Besides the Nenana coal field, which is a part of the Yukon Basin, there is also in the Yukon Basin, scattered in various small areas, some 317 square miles of coal lands, which is about half of a low-grade bituminous and the other is lignite.

The CHAIRMAN. There is no high-grade coal in any of that?

Dr. BROOKS. No. There is a little bituminous in the lower Yukon, which has been attempted to be mined, but not very successfully.

On the Seward Peninsula, on the south side of which is Nome, there are several small lignite fields, which are of high value for local use. One of them has been developed and produced considerable coal for local placer mining. Under what authority it was done, I do not know, but I guess it was without authority.

The CHAIRMAN. Do you know the area, in miles or acreage, of all these fields?

Dr. BROOKS. Yes, sir; it is in this statement which I have here. In the Seward Peninsula there is a total of about 48 square miles, or 31,000 acres, but there is only a small part of that that happens to be where it is available for local mining use. Seward Peninsula is

practically without timber, so any coal on it is of very great value. Most of the fuel they have there now is brought from Seattle and British Columbia.

Mr. RAKER. What field is that?

Dr. BROOKS. That is the Seward Peninsula.

Mr. RAKER. Are there any filings on that land now?

Dr. BROOKS. I believe there are. There are five claims, according to this statement of the Secretary. They are marked as the Nome coal field. Then, in the extreme northwestern part of Alaska are two coal fields, known as the Cape Lisburne region. This includes a small area of some 14 square miles, or something over 9,000 acres, of semi-bituminous coal. That is very high-grade coal. There are only two of these coal beds, and it is high-grade coal, and the only high-grade coal that we know of outside of the Bering and Matanuska fields.

Mr. FERGUSSON. How thick are those?

Dr. BROOKS. They are something like 4 or 5 feet thick. Close at hand is a very large area of low-grade bituminous coal, 205 square miles, or 131,000 acres. Both of those fields lie on the Arctic seaboard, and they are only accessible to vessels for about six weeks in the year. Therefore they probably have no value except for local use. There has been a little coal mined there for whalers.

Mr. GRAHAM. What do you know about this as to the extent and quality of the coal?

Dr. BROOKS. The coal at Cape Lisburne is high-grade coal, somewhat above the bituminous and approaching the semianthracite, but there is not very much of it, so far as I know. The coal-bearing rocks stretch inland, but the inland region has not been explored at all, so we do not know anything about it.

Mr. GRAHAM. The presumption would be in favor of the coal where the coal-bearing rocks are?

Dr. BROOKS. Yes, sir; but whether these particular coal beds are there or not, we do not know. Close at hand is what is called the Corwin field, which probably has an enormous value as a coal field. I do not know that we made any estimates of it. That stretches inland, too. I think it is quite likely there is as much coal in northern Alaska as there is in all the rest of Alaska put together. It is so in accessible that it hardly enters into the present discussion.

Mr. FERGUSSON. It is very cold up there?

Dr. BROOKS. It is not a question of cold, but a question of transportation. These localities can only be reached for about six weeks in the year. The rest of the time the coast is locked in ice. It is on the Arctic Ocean.

Mr. FERGUSSON. It is so cold that it is inaccessible?

Dr. BROOKS. Yes; it is only a question of getting in with a ship.

Then, in addition to these coals in the Cape Lisburne region, we have in all the rest of northern Alaska, including that part of Alaska which is properly polar land, north of that part of Alaska which would be inhabited, an extensive area about which we know very little, but the surveys we have made indicate there are some 102 square miles of coal lands in there, and I think probably very much more that that. That is mostly lignite, but there is some bituminous coal among it. That covers all the Alaska field.

The CHAIRMAN. Let me revert for a moment, by way of recapitulation. What did you say was the total acreage of the Bering field?

Dr. BROOKS. 28,352 acres is the net.

The CHAIRMAN. If you reserve 5,000 acres for naval purposes, that would leave 23,000 acres for leasing, if there were no claims?

Dr. BROOKS. Yes. The only point to that is that some of that coal is anthracite, and anthracite coal at present has the least value. What they want is coking coal and steam coal and not the anthracite coal.

The CHAIRMAN. Irrespective of the quality, I am getting at the acreage. You have 28,000 acres of it, and if you lease 5,000 acres you have 23,000 acres remaining on the Bering River.

Dr. BROOKS. Yes.

The CHAIRMAN. If all the 566 claims that have been unadjudicated were going to patent, how many acres would there then be left for leasing in that field? I suppose you can not get at that without a mathematical calculation.

Dr. BROOKS. No, sir; you would have to work out each individual claim. Of course, you must remember these claims, or a good many of them, run over the line which we have recognized as the limit of coal lands.

The CHAIRMAN. Precisely. Let me ask Commissioner Tallman about that.

Do you know, Commissioner Tallman, the total area in acres of the 566 unadjudicated coal claims?

Mr. TALLMAN. Those 566 claims are in all fields. In the Bering field, there are 294 claims.

The CHAIRMAN. What is the total acreage of those 294 claims?

Mr. TALLMAN. It would be 294 times 160.

The CHAIRMAN. They are not all 160 acres?

Mr. TALLMAN. That is the basis of them. They are practically that.

Mr. GRAHAM. They are substantially 160 acres?

Mr. TALLMAN. Yes.

The CHAIRMAN. That is a good deal more land tied up than we have there in the Bering River field.

Dr. BROOKS. I might explain that in part in this way: As I said, we had information that coal fields extended back into the range. The reason we have not surveyed is because there is no hope of being able to use it, because it is too expensive to get it out. Some of these coal lands are staked beyond the limits of our survey in the region which is probably in the Bering, but which we have not included in this acreage.

The CHAIRMAN. We will assume that the coal areas reach a greater area than the one you have just suggested; but if 82,000 acres have been filed upon and your survey only covers 28,000 acres, surely every acre in the Bering field has been filed on by somebody, has it not?

Dr. BROOKS. Yes.

The CHAIRMAN. At least so far as your investigation goes.

Dr. BROOKS. I do not know about that at all.

The CHAIRMAN. Might we not be in the attitude here of passing a bill which reserved more land than we had that was subject to any disposition at all? In that event we would be doing nothing for Alaska, would we?

Dr. BROOKS. Do you refer in that question to the naval reserve?

The CHAIRMAN. Yes.

Dr. BROOKS. This reads that that is the maximum.

The CHAIRMAN. Precisely; but I think we can safely assume they will reach the maximum of reservation. That has been the rule in Alaska.

Mr. KENT. Were not the Cunningham claims in this Bering field?

Dr. BROOKS. Yes, sir.

Mr. KENT. And they have been canceled?

Dr. BROOKS. Yes.

Mr. KENT. How many acres did they amount to?

Dr. BROOKS. 5,280 acres.

Mr. KENT. Then we own that; we know we have that.

The CHAIRMAN. We have enough for the naval reserve that we recovered from the Cunninghams.

Mr. LENROOT. Would it be practicable, Mr. Chairman, to get the figures of the canceled acreage in this known 28,000 acreage?

The CHAIRMAN. I think it would be very helpful. Dr. Brooks, I will ask you to cooperate with the General Land Office and get for us and furnish to the committee at the next meeting the actual acreage in the claims that have been canceled and in the claims that are still unadjudicated, so we can make some comparison and see what we are doing.

Mr. LENROOT. Within this area that Dr. Brooks speaks of?

The CHAIRMAN. Within the 26,000 acres that Dr. Brooks has examined and has information about.

Dr. BROOKS. Yes; I will do that.

The CHAIRMAN. Passing to the Matanuska field for a moment, this bill has in contemplation the reservation of some 7,000 acres over there. Do you have any data at your command that will show just what acreage of coal lands are available for leasing or in form for disposition in that field?

Dr. BROOKS. In the Matanuska field the number of claims has been very much less than in very many other fields, so the private surveys do not begin to cover the entire field. I do not know just what part of it is available. I should say there was a considerable acreage there included within these surveys which could be leased.

The CHAIRMAN. Adopting your figures for a moment of 66,000, with a withdrawal of 7,000 acres, you would have in the neighborhood of 59,000 acres in that field?

Dr. BROOKS. Yes.

The CHAIRMAN. Just what acreage of this is taken up by unadjudicated claims you do not know?

Dr. BROOKS. It is marked in this report as some 8,000 acres.

The CHAIRMAN. Then if 7,000 acres are withdrawn under the provisions of this bill for naval purposes, and 8,000 acres are now segregated by coal filing, whether good, bad, or indifferent, we would have in the neighborhood of 50,000 acres of coal land that would be subject to leasing under this bill in the Matanuska field. Is that correct?

Dr. BROOKS. Yes, sir.

The CHAIRMAN. That makes a better showing for the proposition of leasing than the other field.

Mr. GRAHAM. From the present outlook it is the field that would be most likely to be tapped first by a railroad, too, is it not? The extension of the road from Seward toward Fairbanks would reach it?

Dr. BROOKS. Yes. I suppose a man from Seward would say that, and the man from Cordova would say the extension of the road from Cordova would reach it.

The CHAIRMAN. A line from Seward by way of Matanuska to Fairbanks would tap more important things other than the coal field. It would give opportunity for agriculture, for travel, for gold mining, whereas the line from Cordova, if extended over to the Bering field, would touch nothing but coal.

Dr. BROOKS. That is, after all, a matter of opinion. You will have to admit that. In one case you have a necessary investment of, say, $6,000,000 or $8,000,000 or $10,000,000 to reach the coal field, and in the other case you have an investment, if you are going from Cordova, of $1,000,000 or $2,000,000. I do not remember what the estimates are, but you are right in saying that in one case it would simply be a coal road.

Mr. GRAHAM. Keeping your eye on the two objectives—getting the coal and bringing about the development of Alaska—the Matanuska field offers the greatest inducement, does it not?

Dr. BROOKS. Perhaps I have not that clear in my mind. You are talking about the Government road?

Mr. GRAHAM. I am talking about the railroad.

Dr. BROOKS. Do you mean specifically a Government road?

Mr. GRAHAM. Yes.

Dr. BROOKS. I presume you are right.

Mr. GRAHAM. Taking the two objects into consideration, the Government having built a road would probably reach the Matanuska field earlier than the Bering field, because it would be more in line with the policy on which the road is to be built, not only getting coal and developing the territory, but offering opportunities to citizens to get in there to dig coal, mine gold, and other things of that sort, and develop agricultural opportunities.

Dr. BROOKS. I do not believe I can add anything to your statement, Mr. Graham. I think the problem, when you come down to it, is so complex that you can not make a simple statement. If you open up the Bering coal field by leasing I think it is most likely that proper capital would go in there and bring that coal out.

Mr. GRAHAM. And build a railroad?

Dr. BROOKS. You see, in the case of the Cordova line it is only 40 or 50 miles.

Mr. GRAHAM. Twenty-eight miles additional would do it.

Dr. BROOKS. And in the case of Controller Bay, you have 25 miles; so I do not believe the Government would do that, because they are connecting with a privately owned railroad. If you purchase the Copper River Railroad, that changes it again. On the other hand, there will be a railroad into the Matanuska field. I do not believe you can make a categorical reply to a question of that kind, as to which field will be opened first, unless you predicate all these conditions as to whether the Government is going to build one or two railroads, whether it is going to purchase the existing railroads or work independently of them.

Mr. GRAHAM. Now that we are discussing policies, would it not seem unwise for the Government to buy the Copper River Railroad at all? It is there. It is up to somebody to operate it, and the owners of the mines along that line must operate it. Their operation

of that line would do Alaska about as much good as the Government operation of it would. It seems to me very much wiser for the Government to expend these $35,000,000 in building additional roads rather than buying roads already built.

Dr. BROOKS. I think I will have to fall back on the point that I am a geologist now and not a railroad commissioner.

The CHAIRMAN. This statement of the total known areas of coal lands in the Alaska coal fields, presented by Dr. Brooks, will be incorporated in the record at this point.

It is now 1 o'clock. We will take a recess at this time and renew the hearing at 2 o'clock.

(Thereupon, at 1 o'clock p. m., the committee took a recess until 2 o'clock p. m.)

(The statement above referred to is as follows:)

Total known areas of coal lands in Alaska coal fields.

Region.	Square miles.	Acres.
Bering River coal field:		
Anthracite and semianthracite	28.8	18,432
Semibituminous	15.5	9,920
Total	44.3	28,352
Matanuska coal field:		
Anthracite	4.0	2,560
Semibituminous	52.0	33,280
Bituminous	44.0	28,160
Total	100.0	64,000
Southeastern Alaska:		
Lignite	10.0	6,400
Kenai Peninsula and Cook Inlet region:		
Lignite	282.0	180,480
Alaska Peninsula and Southwestern Alaska:		
Bituminous	29.7	19,008
Lignite	31.5	20,160
Total	61.2	39,168
Susitna Basin and Knik region:		
Lignite	22.0	14,080
Nenana coal field:		
Lignite	122.0	78,080
Yukon Basin (except Nenana coal field):		
Bituminous	162.0	103,680
Lignite	155.0	99,200
Total	317.0	202,880
Seward Peninsula:		
Lignite	48.5	31,040
Cape Lisburne region:		
Semibituminous	14.2	9,088
Bituminous	205.0	131,200
Total	219.2	140,288
Northern Alaska:		
Bituminous	9.0	5,760
Lignite	93.0	59,520
Total	102.0	65,280
Grand total	1,328.2	850,048

RECAPITULATION.

Region.	Square miles.	Acres.
Anthracite and semianthracite	47.0	30,080
Semibituminous	67.5	43,200
Bituminous	454.7	291,008
Lignite	759.0	485,760
Total	1,328.2	850,048

AFTER RECESS.

At the expiration of the recess the committee reassembled.

Mr. RAKER. Doctor, I suppose that the distinctions between anthracite, bituminous, and lignite were thoroughly understood by everybody, but I asked the question of a couple of gentlemen from coal-land States, and they left me in the dark. I am going to ask you to put in the record what you mean by anthracite coal.

Dr. BROOKS. In this classification of the Alaskan coals we have classed as anthracite those coals that run over 78 per cent of fixed carbon. I might say that there may be some difference of opinion as to exactly where the line should be drawn.

Mr. RAKER. What do you mean by "fixed carbon"? What is the potential effect of that?

Dr. BROOKS. Well, I think that is a question we had probably better leave to some of the men who are more familiar with the actual burning and consumption of coal than I am. I have had no experience whatever in the matter of the use of coal. Dr. Holmes can give you that in the greatest detail.

Mr. RAKER. I just took it for granted, Doctor, that you were quite familiar with that. Now, give your statement as to the subanthracite.

Dr. HOLMES. The semianthracites are those containing approximately 75 or 76 per cent of fixed carbon, and the next grade is the semibituminous.

Mr. RAKER. The bituminous comes first?

Dr. BROOKS. No. In the classification used here, for some reason or other—I do not know why—the semibituminous are above the bituminous, and the semianthracite below the anthracite. The semianthracite is 76 per cent. The semibituminous includes those that are between 65 and 73, and the bituminous, practically, those above 52 per cent fixed carbon—52 to 60.

Then there is another group of subbituminous, which is not separated from the bituminous in that, which includes those coals up to 43 per cent fixed carbon. The rest are lignites. They run up to—well, say 32 to 42 per cent fixed carbon. I suppose no two men would agree exactly upon the classification of coals, but that would be sufficient, perhaps, for present purposes. The greater the percentage of fixed carbon the more valuable the coal is. Of course, there are other conditions that come in.

Mr. RAKER. Now, I understand, Doctor, that these other classifications here on the statement you have given to the reporter—such as the southeastern Alaska coal field, and the Peninsula and Cook Inlet regions, and others on the list—have not been surveyed?

Dr. BROOKS. I am not quite clear as to what you mean by "surveyed."

Mr. RAKER. Surveyed by locations——

Dr. BROOKS. You mean, covered by patent surveys?

Mr. RAKER. Yes.

Dr. BROOKS. Why, there are some claims in those areas that have been surveyed. I do not know just how many, except this list submitted by the Secretary of the Interior says, for example, that in the Cook Inlet field there are 172 claims that have not been adjudicated as yet, and in Admiralty Island and Southeastern Island there are 10. In Fairbanks, in the Nenana field, there are 21; in Nome, in the Seward Peninsula region, there are 5. The others are evidently claims which have been surveyed in those fields; I do not know their exact location.

Mr. RAKER. Then did I understand you to say that you doubted whether or not a leasing system would be workable as to the lignite coal fields?

Dr. BROOKS. Why, I think that most of the lignite mining would be done on a small scale, and I doubt whether it is worth while to attempt a leasing system there, because with your collection of royalties, etc., it would hardly pay. The lignite deposits in most of the fields are so large that there is little danger of monopolizing. It is possible, however, that in the Nenana field, near Fairbanks, a big company might like to come in and lease a large acreage, put in a power station, and develop power in some of those mining camps. So I think if you are going to have a leasing law which will permit the taking up of a large acreage it ought not necessarily to be limited to the high-grade fields, because somebody might want to lease a large acreage in one of those low-grade fields. As far as I can see, if you do not lease it, it will be impossible for anybody to get title to enough land to make it worth while to enter into the coal business.

Mr. GRAHAM. Do you think there is the slightest danger of monopoly in a low-grade coal field?

Dr. BROOKS. In most of the low-grade fields there is so much land that I doubt it. Of course, there are certain portions of the field that are better than others, but you can not avoid that anyway. There are a few of those small lignite fields which, you might say, are natural monopolies. For example, take this one on the Seward Peninsula, about 70 miles northeast of Nome. There is just enough coal there, probably, to run one fair-sized mine. You can not prevent a monopoly in that particular case. Whoever controls that will have a monopoly of that coal.

Mr. RAKER. That will be the same whether he has a lease or controls the mine?

Dr. BROOKS. Yes, sir; as far as I can see it.

Mr. RAKER. What I am trying to get at is this, whether or not there ought to be any distinction in the legislation between that which is lignite and that which is anthracite or bituminous coal?

Dr. BROOKS. Personally, I should rather put the difference on the size of the holdings than on the quality of the coal, because if you continue the present law and allow your operator in the lignite fields simply to take up claims under the present law, I think some of those larger enterprises might not be undertaken at all.

Mr. RAKER. This bill would practically repeal all the coal-land laws of Alaska, would it not?

Dr. BROOKS. I do not know, sir.

Mr. RAKER. That is the purpose of it, is it not, Mr. Chairman?

The CHAIRMAN. Undoubtedly, to make it apply to a leasing proposition. And I might say that the only two limitations on the Secretary's power of regulating the leasing, whether of low-grade or high-grade coal, are the 2 cents a ton and the area, which is 2,560 acres. As to that, he could lease any amount less than that and charge any royalty above 2 cents a ton. So that even the law as it now stands could be applied by rules and regulations to the lignite fields.

Mr. RAKER. What is going to be the result as to the expenses of administration of this low-grade coal—this lignite and bituminous coal—as compared with the amount of money to be derived from it?

Dr. BROOKS. Oh, I think it would at present probably cost more than it would come to to collect royalties from those small mines, which are very scattered.

Mr. RAKER. Going a little further and taking that view of the situation, would not the committee really do a humane thing and a good thing for Alaska if it should so open all the lignite coal fields so that the people could go there and file on them and lease them under the law, without any question of leasing, so that the Government would have no expense of regulation? Do you not believe it would be better for the citizens as well as for the Government if such a provision is made?

The CHAIRMAN. Judge, on that question probably you have in mind the fact that the bill provides that each and every citizen or corporation may take 40 acres for their own use, without cost of administration. That would take care of the small holders, which you undoubtedly have in mind.

Mr. WICKERSHAM. Does that apply to the high-grade coal?

The CHAIRMAN. No; I think not; just the lignite.

Dr. BROOKS. The difficulty that I see in that is this: In some cases the lignite fields have to have a large acreage to put in the necessary plant. For example, in the little field there northeast of Nome that I have referred to there was in contemplation several years ago the putting in of a large power plant there to supply the whole peninsula, contemplating the investment of $7,000,000. Now, if they could not get a title to sufficient coal land to start such a plant, to warrant investment in such plant, the plant would not be built. Now, by the present law, so far as I can see, no man can get coal land enough to operate on a large scale.

Mr. GRAHAM. Doctor, about how far below the surface is this lignite found in Alaska?

Dr. BROOKS. Why, the coal we have included in our estimates is exposed in the valley walls. It is mostly horizontal——

Mr. GRAHAM. Outcroppings?

Dr. BROOKS. Yes; outcroppings; and the coal being horizontal, we have no information what may be below.

Mr. GRAHAM. Where it is being mined—as for instance, 40 or 50 miles from Fairbanks—how is it taken out? Through a shaft or drift?

Dr. BROOKS. The only mining that I know of in the Yukon Basin has been on the Yukon, where they have driven in on the outcrop.

Mr. GRAHAM. Do you know how far it is below the surface there?

Dr. BROOKS. I think they have gone in several hundred feet. Of course, there has been very little mining anywhere.

Mr. GRAHAM. In taking it out, how do they support the accumulated earth above it?

Dr. BROOKS. Underground mining. The only mine that I recall was an old one on the Yukon many years ago, and it was timbered.

Mr. GRAHAM. Had it what the miners call a "roof"?

Dr. BROOKS. Yes, sir.

Mr. GRAHAM. A stratum of solid rock above?

Dr. BROOKS. Yes, sir.

Mr. GRAHAM. Then, they can take it out, of course?

Dr. BROOKS. Oh, yes; it is regular underground mining.

Mr. GRAHAM. How thick are the veins?

Dr. BROOKS. The particular one I have in mind—it is many years since I saw that—I think it was 4 or 5 feet.

Mr. GRAHAM. It is susceptible of economical mining, then?

Dr. BROOKS. Yes, sir.

Mr. GRAHAM. Judge Wickersham, is that your understanding of it?

Mr. WICKERSHAM. In the Nenana fields?

Dr. BROOKS. I am talking of the old Drew mines on the Yukon.

Mr. WICKERSHAM. There has been no mining in the Nenana field at all.

Mr. GRAHAM. I have heard you speak, Judge Wickersham, of the coal fields about 40 or 50 miles south of Fairbanks.

Mr. WICKERSHAM. That is the Nenana field. I say there has been no mining there at all.

Mr. GRAHAM. Where does Fairbanks get its supply?

Mr. WICKERSHAM. They do not get any. We burn wood.

Mr. GRAHAM. I got the impression that they hauled coal by wagon from some place not very far from Fairbanks.

Mr. WICKERSHAM. No, never. We get a little blacksmith coal at Fairbanks, but we bring that from British Columbia.

Dr. BROOKS. And from Maryland.

Mr. WICKERSHAM. Most of it comes from Maryland.

Mr. RAKER. I am going to ask a few questions just to develop an idea of my own. I understand, Doctor, that a general survey would have to be made of all these coal fields so as to conform to the usual Government surveys. That is the idea of this bill, and that would be one of the purposes to be attained?

Dr. BROOKS. Yes, sir.

Mr. RAKER. It will take a good deal of money to do that?

Dr. BROOKS. Yes, sir.

Mr. RAKER. And, next, it will take from two to five years to bring about the surveys, will it not?

Dr. BROOKS. That altogether depends on how large a scale you do the work on. You can start out and put parties into each field and get some lands surveyed within a couple of years.

Mr. RAKER. I am talking now practically of all the coal fields in Alaska. It will take a couple of years before they will get on the ground and do the work?

Dr. BROOKS. No, sir; I think that is hardly a fair statement.

Mr. RAKER. How early do you think they will do that?

Dr. BROOKS. If I were to start a survey for the Bering River field; for example, if I had the money available, I should put the parties on the ground about the middle of May or the first of June.

Mr. RAKER. Of this year?

Dr. BROOKS. Yes, of this year. I should expect at the end of two seasons to have completed my survey, ignoring, of course, the present surveys.

Mr. RAKER. It would take practically two years to complete the Bering field surveys on the ground?

Dr. BROOKS. I think it would; yes, sir.

Mr. RAKER. It would take from six months to a year to get the surveys approved by the department, the way they generally run?

Dr. BROOKS. I do not know as to that. I am not familiar with that procedure.

Mr. RAKER. I understand it runs from six months to a year.

Mr. WICKERSHAM. That could be expedited.

Mr. RAKER. Yes, it could be expedited. Now, it would take longer in the Matanuska coal fields, if you had sufficient men and money—about how long?

Dr. BROOKS. I think that could be completed in two seasons.

Mr. RAKER. Providing sufficient money was had for that purpose?

Dr. BROOKS. Yes, sir.

Mr. RAKER. Could you give a rough estimate of about what it would cost? Let us take the Matanuska field first.

Dr. BROOKS. I made a rough estimate in my testimony of a week ago, stating that it would cost from $200,000 to $300,000 to survey the two fields. I do not know that I can modify that now.

Mr. RAKER. I remember something about that. Let us go on down to southeastern Alaska. That will take about how long? It will take another set of men and more money, will it not? I want to get in the record, Doctor, something concrete. If Congress is going to relieve these people I believe in relieving them and not leaving them in the dark.

Dr. BROOKS. Southeastern Alaska has such a small area that it could be done in a season, and at almost any time in the year.

Mr. RAKER. How much do you think that would cost?

Dr. BROOKS. I do not know. It might cost $10,000 or $20,000. If you simply survey the coal fields—say, $25,000 at the outside.

Mr. RAKER. Now, we will go to the Kenai Peninsula and the Cook Inlet region. There is 180,480 acres. It will take about how long to survey that?

Dr. BROOKS. I think there will be no trouble in doing it in one season if you have your party large enough.

Mr. RAKER. Approximately how much would that take?

Dr. BROOKS. I think that probably could be done for $40,000 or $50,000 at the outside. It is a country that is readily accessible.

Mr. RAKER. It would take how long.

Dr. BROOKS. One season.

Mr. RAKER. The Alaskan Peninsula and southwestern Alaska, 39,168 acres. How long will that take?

Dr. BROOKS. That is pretty well scattered. One party could not do it in one season. There are two or three coal fields scattered out there.

Mr. RAKER. A couple of seasons?

Dr. BROOKS. Yes; I think a couple of seasons.

Mr. RAKER. How long is a surveying season?

Dr. BROOKS. In the Alaskan Peninsula it is from about the 1st of June to the 1st of October, or something like that. That is in the Alaskan Peninsula.

Mr. RAKER. Two years' work will require how much money?

Dr. BROOKS. Say $50,000.

Mr. RAKER. Take the Susitna Basin and the Knik region. That will take how long?

Dr. BROOKS. That coal is scattered all over the Susitna Basin in small areas. There probably would not be any demand for it at present.

Mr. RAKER. We are going to treat all the regions alike——

Dr. BROOKS. I should not want to undertake to do it in less than two seasons.

Mr. RAKER. And it would cost how much?

Dr. BROOKS. Say $75,000.

Mr. RAKER. Now, take the Nenana field of 78,080 acres. That would take approximately how long?

Dr. BROOKS. That would take at least three seasons.

Mr. RAKER. And approximately how much would it cost?

Dr. BROOKS. Why, $75,000 or $100,000. Probably $100,000 would be the safest estimate.

Mr. RAKER. Let us come to the Yukon Basin now; there are 202,880 acres. That would take about how many years? I am assuming now a full force during the entire surveying season.

Dr. BROOKS. Why, those fields again are widely scattered. It is something you could not get to, hardly.

Mr. RAKER. It would take three or four years?

Dr. BROOKS. Four or five years, say. The expense might be $25,000, or it might take $100,000 or $125,000.

Mr. RAKER. For a year?

Dr. BROOKS. No; for the whole thing.

Mr. RAKER. Now, the Seward Peninsula, of 31,040 acres, would take about how long?

Dr. BROOKS. That is in two areas. That could be done in certainly not over two seasons.

Mr. RAKER. At an expenditure of what?

Dr. BROOKS. Not over $50,000.

Mr. RAKER. Take the Cape Lisburne region; that would take approximately how long?

Dr. BROOKS. That is way up in the extreme northern part of Alaska, and I have not much idea how long it would take.

Mr. RAKER. It might run six or seven years?

Dr. BROOKS. The only sure way of doing it would be to have parties stay up there, because the country is so inaccessible.

Mr. RAKER. And that is practically indeterminable?

Dr. BROOKS. Yes, sir.

Mr. RAKER. And the expense would be quite great, too?

Dr. BROOKS. Oh, yes; that would be very expensive work; and, of course, the coal not being wanted now——

Mr. RAKER. Are there not people in there now?

Dr. BROOKS. Very few. That is in the extreme polar part of Alaska.

Mr. RAKER. There are claims there.

Dr. BROOKS. I suppose there are one or two right on the coast.

Mr. RAKER. And that is in the reserve, is it not?

Dr. BROOKS. Oh, everything is reserved.

Mr. RAKER. The question is now, if we are going to open up the fields so the people can get in there and get fuel, to let the committee know about what the expense is going to be and the time that will be required.

Mr. GRAHAM. Let me call your attention to the map of Alaska. You see, here is the Arctic Ocean up here, and Dr. Brooks is now speaking of the territory along the shore of the Arctic Ocean where there are only a few occasional or semioccasional steamers.

Mr. RAKER. I am trying to get in the record this idea that no one field ought to have the preference of the other, and they ought to have relief in all the fields. That is what I am trying to get before the committee.

Dr. BROOKS. But you take northern Alaska—there might be an area of a few square miles up there which somebody would use in the next 50 years, so that you can almost eliminate that. You can send a party up there in one season to survey the coal lands that are right on the coast, and the rest of it you could hardly consider at all.

Mr. RAKER. In northern Alaska there are 65,280 acres. That would take, I suppose, from three to eight years?

Dr. BROOKS. Nearer eight than three.

Mr. RAKER. And the expense would be approximately what, do you think?

Dr. BROOKS. Oh, you would have to winter your parties there. It might cost hundreds of thousands of dollars. It is hard to estimate that.

Mr. RAKER. Now, on the question of the surveys that have been made by the deputy United States surveyors for private individuals, it has been stated they are definitely located on the ground with nothing to tie to the claims that have been canceled, and the title clear in the Government now. Assuming that to be the case, those could now be separated and definitely marked and provided for a lease, don't you think?

Dr. BROOKS. I certainly think so. I can not see any reason why they should not be.

Mr. RAKER. And the survey made later could tie onto them the fractions added to the 40 or 80 acre tracts, as the case might be, without any difficulty?

Dr. BROOKS. Yes, sir.

Mr. RAKER. Now, those that are not adjudicated—say, the 566—so far as surveys are concerned they are practically in the same condition, or would be in the same condition as to the survey now made as well as to their tying and adjustment with the general public survey later made?

Dr. BROOKS. Yes, sir; except that, in some cases, I suppose, the patents may be refused because the surveys were not considered adequate.

Mr. RAKER. Now, would there be any injustice done to the Government or any injustice done to the individual in the case of these claims now in contest if the Government would permit them to work the claim and dispose of the coal by the same method that is

provided for in this bill, until their litigation is settled; having in mind the purpose that we should give coal to Alaska and to the people adjacent thereto providing specifically in the bill that this lease or use of the mine should not in any way affect the contests now pending?

Dr. BROOKS. The larger number of these coal claims are so located that, without transportation, the coal is worthless.

Mr. RAKER. It has been stated to the committee, doctor—and I would like to have it in the record—that the department has tied up the use of any coal.

Dr. BROOKS. Yes, sir.

Mr. RAKER. Under the survey there is a contest now pending. If the bill provided that those parties claiming could work their claims and dispose of the coal under the regulations of this bill, paying a royalty for what they took out, and that that should not in any way affect the contest, that would relieve the present situation and give them coal, would it not?

Dr. BROOKS. I think in the majority of cases it would not relieve the situation very materially, because they can not mine this coal without a large investment. They will not make this initial investment unless they have some definite guaranty that they are going to have there a leasehold or freehold. If within a year or two their claim is going to be rejected they are not going to mine the coal. There are a few claims located on tidewater or close to tidewater which probably could be operated in a small way, but the majority of them are out of reach of transportation. I do not believe it would help most of them quickly.

Mr. RAKER. So this at present has not really affected those that have their claims, so far as present utilization is concerned? Is that what I understand you to mean?

Dr. BROOKS. Of course, if some one had gotten title to the claims the result would be that they would have made the necessary investment for transportation and mining equipment, and by this time would have developed some coal. But you can not expect them to do the same thing if you simply give them a revocable permit to mine coal until the Land Office gets ready to decide whether they have any equity in that coal land or not. In granting patents now you could not mine coal for a year or two. If these patents were granted at once it would take a year or two at least before any coal could be mined, with the exception of a few localities where the coal is on tidewater. There is a group of fields on the Bering River field where they are bringing it out on scows down to the coast.

Mr. RAKER. Take the most favorable conditions that could be had. If we permit the mining to commence immediately under the surveys already made, how long do you think it would be before the people of Alaska would be able to get coal?

Dr. BROOKS. Well, you see that is tied up with this question of transportation again. I do not pretend to know whether this private capital, for example, will build a railroad into the Bering River field under the present conditions or not. There are two alternative projects, and whether those people will put the money in, millions of dollars, to bring that coal out at once after leases have been made, I do not pretend to know. And the same thing holds true in these other fields.

It seems to me that as a general proposition the leasing of Alaska coal lands, except those that are on tidewater, necessarily means Government transportation. I can not see it any other way. That is, if you do not give the man title to the coal lands you have to provide the transportation. Of course, in some instances, especially in the Bering River fields, your investment is comparatively small, and that coal field, I imagine, will develop if leases are granted without Government aid.

Mr. GRAHAM. If the Government builds a railroad to the Matanuska field, what do you think of the probability of the Guggenheims building a branch road to the Bering field, even though they did get the coal there?

Dr. BROOKS. I can not say, of course, what the Guggenheims might do, Mr. Graham.

Mr. GRAHAM. The Copper River Railroad, whoever they are.

Dr. BROOKS. I can only say, from the point of view of the money they have invested there and the need for coal, it seems to me they are quite likely to spend the additional million or two to bring that coal out, because that coal is needed on the 200 miles of railroad they have to-day, and it is needed on Prince William Sound for the proposed smelters. It seems to me it would be a good business proposition for them to do it. Probably that answers your question.

Mr. GRAHAM. The greatest expense, really, connected with an extension of their line would be the bridging of the Bering River?

Dr. BROOKS. No, sir. In fact, they can reach the coal field without crossing the Bering River. They have crossed the Copper River, you know.

Mr. GRAHAM. I mean the Copper River. Have they crossed it at a point that would be in line with the Bering field?

Dr. BROOKS. Yes, sir. It is somewhere about Mile 30.

Mr. GRAHAM. From that on to the Bering River coal field is practically level country?

Dr. BROOKS. There are two alternate routes. One is the 60-mile route, which follows practically level ground, and the other is 20 miles shorter and lies higher.

Mr. GRAHAM. How about danger from moving glaciers? They would be free from that?

Dr. BROOKS. Yes. They pass close to a glacier, but I think they are far enough above it.

Mr. GRAHAM. If they are far enough above it, there is no danger from it?

Dr. BROOKS. That is my impression. I mean topographically above it. They are passing alongside of the glacier, but at a higher altitude.

Mr. GRAHAM. And the movement of the glacier is away from where that road would be?

Dr. BROOKS. It would be parallel to it, sir.

Mr. RAKER. I notice here in the report of the Secretary that 255 tons of coal were produced in Alaska in 1912, and what other coal they used was imported there. They claimed there was coal right handy where it could be had. That was in the Bering River and Matanuska fields.

Dr. BROOKS. Of course, different parts of Alaska would be served by different fields.

Mr. RAKER. I was trying a moment ago to confine my questions to the use of coal by the local people of Alaska. If they had the opportunity—say they have two months and a half to begin to get coal—where would they get it from; from the Bering River and Matanuska fields both?

Dr. BROOKS. On the Bering River field the only way they could get coal out of there at present would be out of the fields which come close to tidewater. There is some that could be brought out on scows. The Matanuska field is 90 miles from tidewater, far from any settlement, and you could not use any of that coal until you got a railroad in there. I suppose there might be a little used for blacksmith purposes, brought out on sleds in the winter, but no considerabe amount.

Mr. RAKER. Your theory is, then, that under the mining system the railroad is really the determining factor?

Dr. BROOKS. I think it is for those larger enterprises. There is some coal along the Yukon, there is some on Cook Inlet, there is some on the Alaskan peninsula, which could be used for local purposes; but your whole production would not amount to more than a few thousand tons probably. I do not see how you can bring coal from the Nenana coal field, for example, without a railroad.

Mr. RAKER. As I understand your statement, there is not a crying necessity for the people of Alaska right now for a present opportunity for the use of the coal that is there. That is what I am trying to find out, to see what provision we should make in this bill.

Dr. BROOKS. The point is that the longer you wait, the longer the coal fields will take to be opened up. It takes a certain length of time to do it anyway.

Mr. RAKER. But under this bill it will take, at the very least, two years before they get the surveys done. Then we have to have the surveys approved, which will take another six months or a year. Then comes the question of the Government reserving, so we have practically three years before these people under the present arrangement in the bill can get coal unless some other means are devised. Are not those people in the present need of the coal, and could they not begin to use it? I am asking a far-fetched question, but I would like to know.

Dr. BROOKS. It is going to take, of course, some time to provide transportation to get that coal out to fill the larger needs. Some of those little local mines——

Mr. KENT. Your 10-acre proposition covers your little business.

Mr. RAKER. You can not get on that until it is surveyed.

Mr. KENT. You can by adopting these surveys.

Mr. RAKER. That is what I am driving at all the time. About T. P. McDonald's claim—where is that located?

Dr. BROOKS. That is the one I referred to. It is right on tidewater.

Mr. RAKER. That has been surveyed and is so located that they could commence to lease that immediately, couldn't they?

Dr. BROOKS. Yes; it is right on tidewater. I have no doubt they could.

Mr. RAKER. Do not the local people need it?

Dr. BROOKS. They certainly do, right in that particular case; but I have already cited that as an exception, because it is on tidewater,

and it is a good grade of coal and you could afford to carry it some distance.

The CHAIRMAN. In section 10, page 6, we find this language:

That in order to provide for the supply of strictly local and domestic needs for fuel, the Secretary of the Interior may, under such rules and regulations as he may prescribe in advance, issue to any applicant qualified under section 3 of this act a limited license or permit granting the right to prospect for, mine, and dispose of coal belonging to the United States on specified tracts not to exceed 10 acres to any one person or association of persons in any one coal field for a period of not exceeding 10 years, on such conditions not inconsistent with this act as in his opinion will safeguard the public interest, without payment of royalty for the coal mined or for the land occupied.

Now, it seems to me that that—of course, in a very limited degree—would allow them to begin at once——

Mr. KENT. To enter without further surveys.

The CHAIRMAN. Yes; for strictly local and immediate use.

Mr. KENT. I think that is just the very point in the judge's mind.

The CHAIRMAN. I believe it is. The Secretary can say to you or any other citizen in Fairbanks or Bering field or the Matanuska field: "You may go and take 10 acres for local use—preliminary," which is a very wholesome provision, I think. They have been sewed up there for seven years, but this section undoubtedly gives them enough coal to build a fire in the cook stove.

Mr. JOHNSON. Wouldn't they have to have a survey before they could even do that?

The CHAIRMAN. That was not the thought of the conference that got this up. It was thought they could go ahead and give them this relief before any of the big propositions were worked out.

Mr. KENT. In other words, it is an emergency proposition to meet a desperate situation?

The CHAIRMAN. Yes, sir; the homesteaders up there can not even get coal to keep their houses.

Mr. KENT. And there is not much doubt that the Secretary would interpret it liberally in the interest of the settler.

Mr. JOHNSON. This provides that they may do this "on specified tracts."

Mr. KENT. They can locate them on the ground; they do not have to have a survey necessarily.

Mr. RAKER. I would like to get it in the bill, so that there would not be any doubt that the Secretary could immediately give this relief.

Mr. KENT. We can take that up when we come to reading the bill. We all agree, I think, that the nigger ought to be taken off the safety valve for a while.

The CHAIRMAN. Are there any other matters we desire to develop by Dr. Brooks? If not, we will take one of these other gentlemen here.

Are there any other gentlemen who wish to say anything on this bill?

Mr. Wickersham, do you desire to be heard now?

Mr. WICKERSHAM. No, sir.

The CHAIRMAN. Mr. Joslin, do you want to be heard in connection with this Alaskan bill at all?

STATEMENT OF MR. FALCON JOSLIN.

Mr. JOSLIN. Mr. Chairman, I am in favor of this bill. Speaking generally, I think it is the most liberal bill that has been offered in Congress, as far as I have been able to judge.

There are two or three features of it, I think, that ought to be amended, but I am not prepared to go into a detailed discussion of it at all. But since you ask me, I will state that the first point is that the lands in the Bering coal field and in the Matanuska coal field which are now expected to be leased have heretofore been sold, and the Government has got the money for them, and they have got the improvements on the land. The total amount of money that the Government has got is something near $400,000—of the citizens' money, which they have accepted in purchase of this land and have given receipts for it. The amount of that money is small compared to the amount of money the purchasers have spent in improvements on the land. These improvements consist of surveys, which probably amounts to not less than $1,000 per claim. I should think the cost of surveys in the aggregate has been $200,000 or $300,000. While I do not know for sure, I should imagine that these four or five hundred men who have tried to buy coal lands, in the aggregate, have spent probably a million dollars in cutting trails, digging pits in the ground, and so forth, all of which work is of permanent value to the land. It does not diminish the value of the land at all; it increases it.

The Government now proposes to wipe out those claims. To change the system of land tenure, and instead of ratifying those sales, proceed to lease that same land and to give those people who tried to buy it under the law as it is written no preference right, or to preserve their improvements, or to save their surveys, or to recover their cash payments.

Mr. KENT. Are you not talking about the two distinctive propositions? The first proposition is that these people who have been adjudicated as not having title, have definitely lost their right, irrespective of this legislation. It does not seem to me wise to mix up the proposition of whether it was a just claim or not with this proposed legislation. That is what you are doing. They are two distinct propositions, are they not?

Mr. JOSLIN. I do not know how they are distinct.

Mr. KENT. One is a leading proposition and the other has to do with the rights of these claimants.

Mr. JOSLIN. I know, that is true, but these men have paid their cash, and their surveys and improvements are on the land, and the Government proposes by this bill to deal with this same land and disregard what has gone before.

Mr. KENT. Not in this bill. This bill specifically provides that those claims have to be adjudicated before the Government can go on and do anything else. There are two distinct propositions. The next proposition is that if they do not have title the Government can go ahead and do something else with it.

Mr. GRAHAM. In other words, Mr. Kent means that this is not a bill to give any relief to coal-land claimants in Alaska.

Mr. JOSLIN. You are going to allow the Government to continue to keep their money?

Mr. GRAHAM. We are not going to deal with that at all.

Mr. THOMSON. Not by virtue of this bill?

Mr. KENT. No; not by virtue of this bill.

Mr. JOSLIN. But in so far as the claims have been canceled, the Government is going to take their improvements. Take the Cunningham claims for instance: The Government has $53,000 of Mr. Cunningham's and his friends' money, which they have paid as purchase price for this land. They have the surveys which Mr. Cunningham and his friends made, which cost them, as I understand, about $100,000. They have, in addition, the tunnels and prospecting work he did, the trails which he cut, which, I suppose, cost $50,000 more. Those claims have been canceled. Is it proposed that the Government here is going to lease these lands to somebody else while it keeps that money and keeps the improvements and keeps the surveys, and even, possibly, make use of those very surveys?

Mr. GRAHAM. This bill does not deal with that question at all.

Mr. JOSLIN. That is exactly the defect in the bill.

Mr. KENT. It has nothing to do with that. If this bill was not in existence the Cunningham propositions would be chopped right off here, and would be lost.

Mr. JOSLIN. It is chopped off.

Mr. KENT. This bill proposes that if that is chopped off there, that we start de novo—to do something else.

Mr. JOSLIN. It seems to me, then, that there should be a bill carried through parallel to this to deal with these people whose money the Government has taken. It is not moral to keep that money. There is no metaphysical argument that can be made that would justify, in my mind, the keeping of that money and keeping the improvements and disregarding of what has gone before.

The CHAIRMAN. Does this not appeal to your sense of justice: If the Cunningham claims—taking them as an example—were fraudulent and filed on by dummies and in bad faith, as it is asserted that they were, and as the Land Office has since found that they were, rightfully or wrongfully, but they have so held, then should a man profit by his own fraud, do you think?

Mr. JOSLIN. No; he should be properly punished for that fraud, but whether that punishment should result in the confiscation of the whole cost price of the land and the $100,000 or $200,000 of improvements, which the Government keeps, strikes me as an excessive punishment for that kind of fraud.

Mr. GRAHAM. It is either one thing or the other. If the claims were fraudulently made and have been canceled for fraud, then the Government can not recognize any equity in them. To do so would be to admit that they were not fraudulent.

Mr. JOSLIN. Quite true. That is certainly correct.

Mr. GRAHAM. The Government could not take two antagonistic positions.

Mr. JOSLIN. That may be true. But the Government has got the money and the land has got the improvements nailed upon it. Can you keep it with good conscience? It is against my feeling in the matter.

Mr. GRAHAM. Is it your feeling that nothing should be done with the coal lands in Alaska until the moral claim you refer to of the Cunningham claimants and others is first settled?

Mr. JOSLIN. Oh, no, indeed.

Mr. GRAHAM. That would mean, you know, that nothing would be done with the coal for a generation.

Mr. JOSLIN. My own belief is that what should have been given to the existing entryman was the right sought to be given in the bill introduced by Judge Wickersham a year ago, on which very elaborate hearings were held and which permitted these men to bring actions in any case where their entries were contested by the Government in the courts and thereby get an adjudication of them. In my judgment, that would have produced and will yet produce the quickest results in opening up the coal fields of Alaska. If you do not want to do that, or if Congress is dubious about the decision that might be rendered by the courts upon those rights, then I should say that it would be wise either to put in this bill a provision or bring in a separate bill providing that the Secretary of the Interior should negotiate with these men who have claims to extinguish them by paying them back the money that the Government has received from them, together with the cost of their surveys and, possibly, their improvements. Then the Government could equitably lease them to somebody else. It seems to me mere common justice to do such a thing. Or give these claimants the power to take their actions in the courts. I believe myself that this would result in a very prompt settlement of the whole trouble. That is why I supported with all the vigor I knew how the bill introduced by Judge Wickersham.

The CHAIRMAN. The position you take is one of having this bill not only be a leasing bill, but, in addition thereto, to afford those people a remedy they do not now have.

Mr. JOSLIN. I think that the bill should not attempt to ignore what has been done in the past.

The CHAIRMAN. Now, wait a minute; let us get at exactly what we are doing. You see on page 2, lines 23 and 24, that this bill shall have no effect one way or the other on valid existing rights.

There has been some question raised by Mr. Lenroot to the effect that that was deficient in language in some way or other, but undoubtedly the intention of those who drafted the bill and of this committee would be to leave you people just where we find you——

Mr. JOSLIN. I would like to correct you, Mr. Chairman, by saying that I have not any interest in the claims whatever.

The CHAIRMAN. I understand that. I am taking your position to see if it is a sound one, irrespective of what your individual interests would be. You say you have no interest in it, and I take that to be a fact. The only point is, you think in addition to passing a leasing bill we ought to give them the right to go into courts, which would be an additional remedy to the one that they now have.

Mr. JOSLIN. I think to give them the right to go into the courts would be the wisest and best way, but I do not think that is the only way that could be done.

The CHAIRMAN. Perhaps not, but that is your position. Your position is that after they have pursued their claims as far as they can in the Department of the Interior and failed, we should now permit them to go into the courts.

Mr. JOSLIN. Or else authorize the Secretary of the Interior to deal with them and return to them the money the Government has got from them.

The CHAIRMAN. But he has already dealt with them and has made his findings, and that finding has become final in some 556 claims.

Mr. JOSLIN. Not all of them.

The CHAIRMAN. No; not all of them.

Mr. JOSLIN. It depends on what policy is pursued by the repartment after this bill has become a law. If the policy of the department will be to wipe out all the remaining 500 claims, they would all be in the position which the Cunningham claims are, and all wiped out, and not one of them would have the opportunity to be heard in court.

The CHAIRMAN. I do not know what the judgment of the committee would be, but it was my judgment and the judgment of those who drafted the bill that we should let those 556 claims come on with their hearing and with the trial of their cases, first, before the local land office, later before the General Land Office, and later before the Commissioner of the General Land Office, with their right of review and all, and that we should neither add to nor take from their rights in any way. And I rather think that is the judgment of the committee.

Mr. GRAHAM. May I ask you a question?

Mr. JOSLIN. Certainly.

Mr. GRAHAM. I would like to ask a question or two as to the policy or tactics involved in the case. You have stated that you think this a very excellent measure, and aside from the objection you make?

Mr. JOSLIN. I do now. I think it is a good bill.

Mr. GRAHAM. And that it would bring much relief to the people of Alaska?

Mr. JOSLIN. I think a few leases would be let there probably. I hope so, at least.

Mr. GRAHAM. That being true, as you would see it, would you think it wise as a matter of tactics or policy to complicate so good a bill as this by injecting into it another matter that will be very bitterly disputed on the floor of the House, and might result in defeating the adoption of this excellent measure?

Mr. JOSLIN. I think, perhaps, as a matter of tactics it is wise to leave that out; but as a matter of conscience, what are you going to do with these men? Then, I think you should give them, in a separate act, which could be reported, discussed, and debated on its own merits on the floor, either the right of access to the courts or the right to the Secretary of the Interior to return to any man whose money the Government has taken the price he paid it at its own invitation.

Mr. GRAHAM. It does not look to me like a man should worry himself to death about crossing bridges he hadn't reached.

Mr. JOSLIN. It is mighty hard to segregate these two questions.

Mr. GRAHAM. These two questions are so different that they could not be joined together, but they should be dealt with separately; and you did not mean it, a moment ago, when you said that this bill and the one you have in mind ought to travel along side by side.

Mr. JOSLIN. In parallel lines.

Mr. GRAHAM. In parallel lines, providing you had one a good bit ahead of the other, but if you are going to drive them abreast, I am afraid that the one horse will prevent the other from getting there.

Mr. JOSLIN. That may be true. In my judgment the fault is upon the executive department. The proceedings relating to the coal claims in Alaska, not only the question between the department and the claimants, but between the department and the people of Alaska and the people of this country, has been one of the worst things in the history of this Nation, and it ought not to be covered up.

Mr. GRAHAM. There are two sides to that question. I have been wrapped up quite a bit in that in the past, as doubtless you know, and the legislation out of which that trouble grew is very unwise and ill-considered legislation, I think, but such as it was—and in my judgment, it was impossible legislation; I do not think the terms, under all the circumstances, could have been kept by anybody; but such as it was, the Cunningham claimants and the other claimants undertook to take and locate and prove up claims under it. Now, having done that, and having done it deliberately, are they to be permitted to come in later and plead the baby act, when they went into it with full knowledge of the circumstances and conditions, and if they lost out, having gone in with their eyes open, there was no advantage taken of them, the language of the law was as clear as could be that they were not to go in with any intent to afterwards consolidate, and the evidence to my mind proves absolutely that they did go in with the intention of afterwards consolidating.

Mr. JOSLIN. The law was so clear that two United States district court justices decided in exactly opposite directions. The claimants' own lawyers, who were as able lawyers as there are on that subject, advised them that they were proceeding legally.

Mr. GRAHAM. I can only speak for myself. I think I went over that as carefully as any judge could have gone over it, and there is not any doubt in my mind that the evidence shows conclusively that at every stage of the game they went in there with the intention of consolidating; that they went in there, made the claims, made the other improvements as the evidence conclusively shows, with the view that it would be worked out as one property. I think that there could not be any dispute about that. They did that in view of the law, as plain as could be, that that was a fraud on the law, and having committed that fraud on the law, and having done it with full knowledge of all of the conditions, it seems to me that they can not now come in and say that they thought that the Government would not enforce its own law, and that they acted on that presumption.

Mr. JOSLIN. My judgment may be badly warped, and it may be also influenced somewhat on account of my personal acquaintance with Mr. Cunningham, whom I have known for a long time, and who I believe to be an honorable and able man, and he has been ruined, and in my judgment and according to my feeling I can not view it in any other way than that one of the greatest wrongs has been done that man that has ever been done any man in this country.

Mr. GRAHAM. He helped to do it. It is a sad case; it is a very unfortunate case.

Mr. JOSLIN. The turpitude in the matter rests upon the executive department of this Government, sir, and not upon Mr. Cunningham and his friends.

Mr. GRAHAM. Well, he went in there, he and his friends, every line of the evidence tends to show, to carry on the enterprise on the

theory that the executive department would not enforce the law, but they took their chances on that and they lost.

Mr. JOSLIN. I would be very glad indeed—I have not my papers here—to show to the committee, and I think it ought to be shown, and I think it ought to be made a matter of record, to show how the action of the executive department of the Government in these coal cases appears to a citizen of this Government who is living in Alaska and who has been carrying on a business there. I am not directly interested in these claims.

Mr. GRAHAM. Let me suggest to you again at that point, if you persuade this committee to inject that feature of the case into this bill Alaska would go a long time indeed without developing her coal lands.

Mr. JOSLIN. I am afraid so. So it must remain, I suppose, one of those wrongs that are never righted. Therefore I will support this bill, but with a feeling that one of the cruelest wrongs that has ever been done in this counery will be carried out and completed by its passage. The withdrawal of lands in Alaska was made by the President of the United States under the express declaration that he was entitled to do anything that the statute did not prohibit him from doing. The Secretary of the Interior, Mr. Garfield, wrote that principle in his annual report. Mr. Roosevelt, in his autobiography, within the last six months, has reiterated that principle. That was the authority under which he withdrew the lands from sale in Alaska. If this bill passes and that wrong is covered up and never corrected he has amended the Constitution of the United States and made the President a czar instead of a constitutional President of this country.

Mr. GRAHAM. But you do not doubt, do you, that President Roosevelt's purpose was a good purpose and a wise one?

Mr. JOSLIN. I do not, sir. I believe if President Roosevelt had remained in office our troubles would have been corrected years ago. No, sir; I would not impute a bad motive on his part or a bad purpose, but it was not wise nor just nor lawful.

Mr. RAKER. What do you mean by your statement that if this bill is passed one of the greatest wrongs of the country will be covered up? Do you think that this bill would be an injustice?

Mr. JOSLIN. No; this bill would not be an injustice. This bill is all right in its prospective operation, but this injustice in the past 10 years, during which that country has been prohibited from being developed by absolutely bad and unlawful Executive action. The future of this bill is good. I do not know that you could get up a better bill for leasing purposes than that. I think the provision for leasing 10-acre tracts is absolutely useless.

The CHAIRMAN. You think that is useless?

Mr. JOSLIN. Oh, quite so.

The CHAIRMAN. Why?

Mr. JOSLIN. Because to mine coal in an economical way it must be done in quantities.

Mr. GRAHAM. That may be true where they have to tunnel it, but in a place like that, where there is not anything to do but to go in there and wedge it out and load it up, do you think that is true?

Mr. JOSLIN. My brother is prospecting a gold mine, where there is coal cropping out on or near his claim. He goes in and uses it now

so far as that is concerned. He is getting coal, and nobody is trying to prevent it. He may be violating the law in doing so. They would use a ton a month. Possibly it might be to some slight advantage, but the coal can not be marketed.

The CHAIRMAN. It was not intended to be, but it was the thought that they could take some for their own use.

Mr. JOSLIN. I think it is wholly unnecessary and useless.

While I am at it I think the question of restating the royalty in 20-year periods is a thing that should be dealt with more definitely. You must remember now, with the history of the Alaska coal claimants behind you, it is going to be hard to get anybody to venture any capital in the Alaskan coal business.

The CHAIRMAN. I agree with you. I would make a minimum royalty of 1 cent, instead of 2 cents. I would make it the least possible, for the purpose of encouraging the leasing of the lands. I would make them so favorable as to be tempting.

Mr. JOSLIN. It must be not only so favorable as to be tempting, but it must have put around it safeguards; and I am not certain but you ought to write into this bill that the Executive Department shall have no power to suspend this law, because the Executive Department has suspended the law that is now written into the statute books.

Mr. GRAHAM. I think you make that statement under a misapprehension.

Mr. JOSLIN. I think not, sir. I have suffered from it. If you had been in my position I think you would agree with me.

The CHAIRMAN. They can not suspend the law when they have a permanent contract.

Mr. JOSLIN. They did do it. The existing law was suspended without the slightest authority except that declaration.

The CHAIRMAN. But there was no contract between the coal claimants; they were simply operating under the law.

Mr. JOSLIN. Is not that a contract? If the Government invites a man to make a purchase of 160 shares at $10 an acre, and he accepts the invitation, files his claim on the land, makes his survey and entry in the land office, and pays his $10 an acre and get a receipt for it, will you say that that is not a contract?

The CHAIRMAN. Yes; but that is not the same kind of a contract as if a man enters into a lease. This is an addition to the law. But, without thrashing out that old straw which has been long since thrashed over, you say that, as president of one of those railroads there, you do think that the time has now come when nothing but a leasing law will do?

Mr. JOSLIN. I think it has come to that now.

The CHAIRMAN. You can think of no conceivable way of getting Alaska opened up except by leasing?

Mr. JOSLIN. That is true.

The CHAIRMAN. Is not this about the only avenue you can find to open Alaska at all?

Mr. JOSLIN. I think so; the only means I can see.

The CHAIRMAN. You do not think your people, in the aggregate, up there will welcome this law, even though it does not accomplish exactly what they were wanting?

Mr. JOSLIN. Oh, yes; they will welcome any law that will enable them to get out their fuel resources. I think you ought to include the oil lands.

The CHAIRMAN. That is covered in a separate bill.

Mr. JOSLIN. Now, since we have a bill for the construction of railroads in Alaska, it means the beginning of a new day in that country; and the oil fields are just as valuable and just as important to be developed as the coal fields. They are now quite completely withdrawn, and I do think they ought to be opened for exploration.

Now, if I may go ahead a little on this one point about the 20-year revision of royalties, I will say that anyone who ventures a quarter of a million or a million or three or four million dollars in the development of these coal fields—and I do not know of any there that could be economically developed for less than a half million dollars—would be confronted with this feature: He takes a 20-year lease. You say the royalty is a minimum of 2 cents per ton. At the end of 20 years he may have that royalty increased to 40 cents a ton or 50 cents a ton. He does not know what it is going to be. He has got to base his calculations upon getting his capital back and being ready to meet a condition at the end of 20 years that would make his total investment worthless. Therefore I do think that when you provide for refixing of the royalty at the end of 20 years it should be specified that the royalty for the next 20-year period should be not to exceed twice as much as the existing royalty, so that a man taking a lease will know in advance how much royalty he must pay clear through until he finishes working out the ground. If not, you will have an increased cost of coal mined under one of those leases, because a person venturing his capital on a 20-year lease, with the certainty that it is going to be revalued at that time on an indefinite basis, is going to calculate on getting his whole capital back during that 20 years. He must do it, because any uncertainty he considers as against him.

The CHAIRMAN. Do you think the ordinary investor would not feel secure and safe enough to go ahead for 20 years and rely upon the department to fix a reasonable royalty?

Mr. JOSLIN. I think he would not. I think he wants to know, and it ought to be written in the law.

The CHAIRMAN. Twenty years is a pretty long time, and he knows he has it for an indeterminate period, according to the bill, subject, of course, to be revised and changed at the end of that time.

Mr. JOSLIN. At the end of 20 years a new lessee could not come in and take it away from him. He has a preference right. The uncertainty is as to how much his royalty is going to be. It might be 50 cents or $1 or such a rate as would destroy him, considering the stress of competition, which he must meet, of fields where there are no royalties.

The CHAIRMAN. You must recognize how difficult it is for Congress to attempt to tell what 20 years will bring forward?

Mr. JOSLIN. Certainly.

The CHAIRMAN. What conditions will develop there owing to the building of Government railroads; the conditions with respect to the demand for coal? A lack of demand would necessitate a reduction in the royalty, and it might be that with 20 years' experience behind

you it might necessitate increasing the royalty. Who can ask to fix it definitely for a longer period than that?

Mr. JOSLIN. I just suggested the answer that it could be fixed by specifying that the renewal for the second 20 years should not exceed double what it was for the first 20 years, and for the third 20 years it should not exceed double, we will say, what it had been for the second 20 years, but all the while making a positive fixed known quantity from the beginning.

The CHAIRMAN. Well, but it would be not only a guess to do that, but it would be a guess 20 years in the future and 40 years in the future.

Mr. JOSLIN. That is true, but when you make them this lease you are going to make it rather difficult for capital to go in there.

Mr. GRAHAM. Suppose at the outset the Government prices might not be just or equitable?

Mr. JOSLIN. Then put a maximum limit for the next 20 years, saying that the royalty should not exceed 10 cents, or whatever you may want to fix it at. Anyhow, write it in some way so that your lease is definite from the beginning to the end of the term.

Mr. GRAHAM. As to the length of the term, if you will bear with me just a minute, what do you consider the ordinary life of machinery and improvements at a coal mine?

Mr. JOSLIN. Well, I have not had sufficient experience along those lines to be able to state.

Mr. GRAHAM. Would not 20 years practically exhaust the improvements that were put in in the initial development of the mine?

Mr. JOSLIN. I have had some experience in coal mining on the Canadian-Yukon side, just over the boundary from Alaska. We operated only for a short time. But I should say this, that every year your equipment for your coal mine must be maintained and renewed, to get good efficiency, so that at the end of 20 years you would not have your plant, like the "one-horse shay," go to pieces. You can not calculate your plant so as to have it come to ruin exactly at the end of any definite period.

Mr. GRAHAM. You spoke of investing $500,000 as a minimum initial investment.

Mr. JOSLIN. That is just a rough guess, of course.

Mr. GRAHAM. Taking that as a starting point, you would not have to spend very much more for the period through which your engines and other machinery would run. Of course, if you are hoisting the ropes would have to be renewed, but at the end of the 20-year period you would have milked pretty dry the great bulk of the investment that you put in there at the beginning of the 20 years?

Mr. JOSLIN. That is certainly so; you would have to milk it dry. You would have to gut that mine, so to speak. And that is one of the iniquities of the leasing system, especially with a limited tenure, as this is. Then the man would not only have to put on a price so as to completely amortize his investment at the end of the period, but he would have to grub out the easiest and quickest of the coal in order to insure making a profit, because you must keep in mind the fact that every man who works a coal mine in Alaska is competing with another man who works a coal mine along the Pacific coast. Just over the boundary, in British Columbia, the coal mines are

being worked on a fee simple title, and other coal mines working on a fee simple title in the States with which that coal must compete. If you tie his hands with a 20-year lease, or a lease for a limited peroad, you are going to force him to gut the mine.

Mr. GRAHAM. There is one feature of it I think you overlook when you speak of competition with mines where the fee is owned. In order to own that fee the company had to invest quite a good deal of money in it, I presume.

Mr. JOSLIN. $10 or $15 an acre.

Mr. GRAHAM. That is quite an amount. When he leases it, he has no initial investment.

Mr. JOSLIN. That is true.

Mr. GRAHAM. Which is a great advantage to him in that regard, so that his royalty—a small royalty—would amount to probably not more than half as much as the interest on the initial investment where he owned the fee.

Mr. JOSLIN. Even a very small royalty would very readily exceed the interest on the $10 an acre. For instance, you take $1,600 as the price of a 160-acre claim. The interest on that at 6 per cent is $96 in a year. Coal at 2 cents per ton would be how many tons—4,500 tons per year.

Mr. GRAHAM. There would be $40 on every thousand tons, at 2 cents?

Mr. JOSLIN. Yes; it would be 4,500 tons in a year, which would be the equivalent of the interest on the capital invested in 160 acres, at $10 per acre.

Mr. GRAHAM. But notice the difference there, apart from all that: In the one instance he spends his money in a dead investment which is laying there—the coal from which he does not take out—and he gets nothing out of it, although his capital is in it. In the other case, he can take that capital which is tied up in the first instance in a coal right, and in the second instance he can take it and make it his working capital, make his improvements with it, and then the royalty payments come a little at a time, so that they are not missed very much.

Mr. JOSLIN. You have expressed very clearly one of the largest advantages of the leasing system, and as far as I am able to judge it is about the only advantage of the leasing system.

Mr. GRAHAM. It has a great many advantages. If at the end of 20 years he wanted to quite the business he is much more likely to dispose of his mere improvements than he would be to dispose of the field of coal and improvements altogether; he could sell in the one case when he could not in the other.

Mr. JOSLIN. Then here is a counter proposition to that. His investment in plant and tunnel work and the other costs $500,000. Every coal mine that is opened can not succeed. We are prone to run on, thinking only of successful coal mines. Of all the coal mines that are actually opened probably half of them are not successful. A man taking a lease must think about failure as well as success. He must think about what is the worst that can happen to him when he ventures into that coal business. The worst that can happen to him under a fee-simple title is that he must shut down his mine and sell it or wait until some future time and a better market when he can open it again. But see what would happen to him under a lease.

If he ceases to operate, he forfeits his title, and his $500,000 is a clean loss.

Mr. GRAHAM. That is only true in a limited way. There are provisions in here that protect him. For instance, it is provided that if through anything which he can not help, such as strikes and lockouts and accidents, and all that, he is given certain relief from the operations of the lease.

Mr. JOSLIN. How about the stress of competition or difficulties in physical conditions in the mine or the discovery of other coal mines in more favorable localities? I figured myself on opening a coal mine at Fairbanks five years ago, and probably would have done it if I could have gotten title. The very first thing that occurred to me was the danger that I would have run from competition. That coal seam probably runs up under the town of Fairbanks. The mine I would have opened would have been 60 miles from Fairbanks. Suppose some one should dig a shaft down there under the town and find the vein, where would I be with a coal mine 60 miles away?

Mr. GRAHAM. You would have been far better off than if you had paid the purchase price of the coal mine 60 miles away and had it on your hands, too, as a white elephant.

Mr. JOSLIN. Competition is one of the very first things to be considered when you are about to enter in any new enterprise—the danger you will have from competition.

Mr. GRAHAM. You would never learn to walk if you adopted that theory, because you might fall.

Mr. JOSLIN. That is true, but then you are threatened from the rear with the danger of forfeiture, so that if through stress of competition or mine accident or explosion or whatever misfortune might befall you and thereby make your mine unprofitable, you may have your whole investment wiped out. You suffer not merely from your misfortune, but are totally ruined by the forfeiture.

Mr. GRAHAM. I may be wrong, but my conclusion is directly opposite to yours. My conclusion is that you run far less risk in a leasing system than any other system whereby you buy your claim and pay for it, as in such a case, if you invest your money in it and fail, you have lost more.

Mr. JOSLIN. If you fail and have a fee-simple title—for instance, you have an explosion in your mine, or other misfortune so great as to wipe out your working capital—all you have to do is to shut down. You still own all your plant and you own the fee-simple title in the land. You may not be able to start it up again at once, but you can stop a while until you can replace your capital or until times are better, but if it is a leasehold you have not got anything at all.

Mr. GRAHAM. You have your lease.

Mr. JOSLIN. But your lease is to be forfeited if you do not work it, under the provisions contained in this bill. It could not be otherwise. No lease could be written that will not provide for a forfeiture if you do not work it.

Mr. GRAHAM. Quite so; but only if you do not work it under certain conditions. But do you mean to say that there is a provision in here to the effect that the lease would be forfeited if an explosion occurred in the mine and the mine was not worked as a result of that explosion?

Mr. JOSLIN. I think so.

The CHAIRMAN. There is a specific exception as to that.

Mr. GRAHAM. If there is such a provision in it, it should be taken out.

The CHAIRMAN. On page 5 there is this provision:

Leases shall be for indeterminate periods upon condition of continued operation of the mine or mines, except when operations shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, and upon the further condition that at the end of each 20-year period succeeding the date of the lease such readjustment of terms and conditions may be made by the Secretary of the Interior—

And so forth.

Mr. JOSLIN. Yes; but that does not provide for cases other than strikes or lockouts.

The CHAIRMAN. Yes; it says here "except when operations shall be interrupted by strikes, the elements, or casualties not attributable to the lessee."

Mr. JOSLIN. Let me explain this. Suppose I open a coal mine in the Bering coal field that has a certain grade of coal. There are 20 or 30 different coal beds in that field. Suppose I have got my $500,000 invested in my lease of 2,560 acres. Somebody comes along and digs a hole into the ground and finds a vein of coal 50 per cent better than mine. Then what is going to happen to me? I will then be obliged to shut down my mine, not from any casualty or accident, but because of competition with coal of superior quality right beside me.

Mr. GRAHAM. Where would you be if you owned the fee?

Mr. JOSLIN. You would at least be able to shut it down a while and sell your machinery for something, and hold your title against some future day when it might be more valuable. In other words, you would have some show for your "alley," as the expression is, whereas under this leasing system you have none.

I do think there should be written into that bill provisions to more carefully guard those who might have misfortune from different reasons, so that if he forfeits his lease and the land is then offered for lease to some one else, he should have at least the value of his equipment that is on it, or something of that sort.

The CHAIRMAN. Of course, the right to assign or sell is subject to approval.

Mr. LA FOLLETTE. That would be very unsafe to put in a thing of that kind. Every man that had a failure would excuse himself on that ground.

Mr. JOSLIN. I just make that as a suggestion, not that I have thought it out. But I do not think it is impossible to establish a safeguard for one who has such a misfortune, because unless there is such a safeguard you are going to find difficulty in making leases.

Mr. LA FOLLETTE. I think the bill contains such a safeguard as any man could reasonably ask for. Read that again.

Mr. GRAHAM. "Leases shall be for indeterminate periods upon condition of continued operation of the mine or mines, except when operations shall be interrupted by strikes, the elements, or casualties not attributable to the lessee."

Mr. LA FOLLETTE. That pretty nearly covers everything that I imagine could happen in the legitimate operation of a mine.

Mr. JOSLIN. The language there is not broad enough.

The CHAIRMAN. In section 12, Mr. Joslin, there is a provision for assignment, which I think is sufficient to guard the lessee, because when misfortune comes or failure to get capital or income, he still has a chance to sell out. Of course, that is by departmental approval so that it may not be monopolistic, but that is open to the lessee, so that he could avail himself of it and recoup himself if he finds the operation of the mine is not profitable.

Mr. Mondell wanted to speak to the committee with reference to a bill which he has offered, H. R. 11616. Mr. Mondell, we will hear you now.

STATEMENT OF HON. FRANK W. MONDELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING.

Mr. MONDELL. Mr. Chairman and gentlemen, my only desire in connection with this legislation is to assist the committee, if I am able to do that, in drafting a leasing bill in Alaska that will work, that will enable capital to enter upon the coal-mining business there, and to carry on the business in a large way. I am interested in it, as we all are, as a general proposition, in seeing the industries of the Territory developed. I am interested further because of the fact that there is a great area of coal land in my own State, and my hope that eventually we shall have legislation under which those lands can be leased. I imagine that the legislation that will follow this upon the public domain generally may somewhat be affected by this legislation. Therefore I am particularly anxious that we shall have legislation that will be workable.

I am going to start in, if the committee will allow me, by making a very brief statement as to the plan outlined in bill 13137 and the bill 11616, comparing the two plans very briefly, and I would appreciate it if the members of the committee would have both bills before them.

The bill 11616 is the bill that was reported by this committee three years ago this month, the only change being a change of three words, by inserting at one place the words "in good faith."

The procedure under that bill would be about as follows: Those desiring to lease coal lands in Alaska would present to the Secretary of the Interior their applications for a certain specific tract of land—when they came to the leasing and after they had passed through the prospecting stage—they would present to the Secretary an application for the leasing of a certain tract of land, not to exceed four sections in area, and apply to be allowed to lease that under the terms of the bill. Under the bill as introduced it would have been mandatory upon the Secretary to lease to the first qualified applicant. Those who were in possession as applicants under other leases would have a preference right only so far as the area covered by their former applications is concerned, but otherwise than that applications should be considered, as they are under all of our lands laws, as they came.

The bill provided for a definite royalty, beginning with from 3 to 6 cents, going for 10 years, from 5 to 8 and from 5 to 10. The period was 30 years. The maximum area was the same as in this bill. A

further period of 20 years, if the lessee complied with all of the conditions of the lease, was granted under conditions of a readjustment of royalty. Under that bill it was contemplated that applications would be made immediately after the passage of the bill. But it was also contemplated that before any applications were received all of the entries heretofore made would be passed upon and finally decided and disposed of, the bill simply providing, as this bill does, that nothing in the bill should in any way affect those entries or applications. But inasmuch as the lease was in no wise dependent upon any rights or claims that had been made, it would have been necessary under the bill at least to have disposed of all of those cases before any leases were made. Many of those cases have already been disposed of.

The bill contemplated that after its passage surveys would be made, but that leases could be made in advance of the rectangular surveys of the Government on surveys made by the applicant, and it was understood that those surveys could in many instances be made very promptly and that leases could be in operation in a short time after the passage of the act. This bill proposes quite a different plan. It proposes, first, that the land shall all be surveyed under the rectangular system; second, that after they have been surveyed the Secretary shall divide them up into blocks, and that he shall then call for bids from those desiring to make leases and grant the lease to the highest bidder, to the one offering the highest royalty, the period of the lease being indeterminate and the period of the royalty fixed at the beginning being 20 years.

So much for the two plans.

Now, if the members of the committee will take the bill that has been introduced, I want to go over it section by section, and I want to emphasize the fact that whatever criticism I make of this bill I make with a view of helping the committee. You may not agree with my views in these matters, but I think it my duty to give you my views.

Section 1 of the bill is unnecessary, because the Secretary has at this time all of the power necessary with regard to the survey of the lands and, if appropriations were made, could make those surveys, and, in fact, could have made them any time within the last 10 years. Inasmuch, however, as the bill is predicated on the theory that the Secretary shall himself determine the areas that are to be leased, of course it is necessary that some sort of a survey be made in order to enable the Secretary to do that.

The second section provides for a reservation of a certain area in the Bering field and a large area in the Matanuska field. Personally it seems to me that such a reservation is unnecessary and might do considerable harm—it might discourage lessees.

The bill to which I have referred, which, for the sake of brevity, I will refer to as my bill (although it is not mine; it is the bill reported by the committee), attempts to take care of the question of monopoly by making a prohibition of monopoly one of the covenants of the lease, and as this reservation is evidently intended as a protection against monopoly, as indicated by the last two lines, it seems to me that you could accomplish your purpose better by having in the covenants of the lease a prohibition against monopoly

and making the lease subject to cancellation by reason of the violation of that covenant. But this other bill also contains this provision—I do not recall the exact language, but this is it in substance—that the United States shall have the right to take, wherever found, the products of any of the mines leased, so far as they may be needed for the Army, Navy, and Marine Corps, at a reasonable price, to be fixed by the President, and giving the owner the right to go to court if he feels that he is aggrieved at the price fixed.

If you have in your leases proper safeguards against monopoly and monopolistic control and then provide that so far as all the product is concerned the President shall have the first right to buy it for the use of the Army, Navy, and Marine Corps at a price he fixes, it seems to me you have a better provision to prevent monopoly than you would have by a reservation which might result in taking right out from the center of your field possibly the only opening for a mine that in the first instance would appeal to investors.

Section 3 is the section that provides that the Secretary shall divide these lands up into leasing blocks and shall award leases thereof through advertisement after competitive bidding, or such other provision as he may make. I am rather inclined to think that there may be some virtue in that plan as regards Alaska. It would not work at all as a permanent plan on the public domain in the United States. I will not take the time of the committee to elaborate on that, but I think it can be very clearly shown that it would be unworkable. However, the two known and available fields of Alaska are comparatively small. There are not opportunities for many large workings, and it is possible that in the first instance instead of either granting your lease to the first comer or placing the responsibility upon the Secretary to decide between applicants, perhaps rather than do either of those things it would be better in the first instance to have this competitive bidding, and I offer no objection to it except this: It contemplates, in fact provides, that the Secretary shall designate the blocks, for instance. He shall survey the Bering field, according to the rectangular system, then he shall divide it into certain blocks, and he shall then advertise and call for bids upon block 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, etc. The difficulty about that is this: Of course we all know that except in a coal field like that of southern Illinois, for instance, where the land is practically all level and the vein undisturbed at about the same depth from the surface at all points and only reachable apparently by shaft, that except in that sort of a country it requires a great deal of care and a great deal of practical judgment to locate a coal mine. The mine, in order to pay, must be located in such a way that the vein or veins can be attacked and worked in an economical way by drift if possible, by slope if necessary, and only by shaft where it is not possible to work the mine in either of the other two ways. In determining the point of attack there must be a careful study of the dip of the veins and of their character. And in addition to that the opening must be at a point where there is room for storage and loading tracks for the mine machinery and structures and the houses of the operatives, officers, etc.

I doubt if anyone except a contemplating operator can determine on the area that they would care to utilize in opening up a mine. I

am afraid you would find it difficult to secure such practical judgment in matters of that kind as to outline blocks or areas that would be entirely satisfactory to those who may desire to lease. The area to be leased, of course, must lie back of the point of attack. It should lie, if possible, so that the coal can be mined largely by gravity, and there must be a place, as I said, for loading tracks, and all that sort of thing. I think it would be pretty difficult for anyone to block out for some one to lease an area that the other party would be satisfied with as a location for a mine. And of course you must have these areas reasonably satisfactory or you increase the cost of mining, and therefore the cost of coal, and you reduce the probability of your being able to get a good bid, of having men bid a reasonable sum. I do not say it can not be worked out, but there are serious difficulties, it seems to me, in the way.

Now, in regard to this provision in this section relative to existing rights. Judge Wickersham and I have, both of us, been in favor of appeals to the courts in certain classes of land cases, but we have never been able to get the House to agree with us. I think you have in this provision an appeal to the courts. Whether you want it or not I do not know, but my notion is that if you lease a tract of this land subject to valid existing rights—I am not a lawyer, but I am talking as a layman, and lawyers may not agree with me—and then leave in the bill the provisions you have relative to court proceedings, under these leases I am rather inclined to think that anyone claiming any rights to these lands might attack those leases.

The CHAIRMAN. You mean those that have already been adjudicated?

Mr. MONDELL. Of course the courts do not always hold the same in all cases in regard to these matters. The Supreme Court of the District quite recently departed from its usual rule and allowed a mandamus of the Secretary in a rather important case, under the homestead law. I just make this suggestion, that it is my opinion—and my opinion as a layman is not worth so very much, I admit; but it is my opinion, a curbstone opinion—that if you lease under these conditions you do give present claimant an opportunity to go into court and open up the whole question of their rights as claimants. It is a question of whether you want to do it or not.

Mr. LENROOT. There is not any question but what it would include adjudicated cases.

Mr. GRAHAM. That is, cases adjudicated by the department?

Mr. LENROOT. I should be inclined to say that anything that constituted, upon appeal to the court, an equity, should be entitled to consideration.

The CHAIRMAN. Do you think that language beginning with the word "And," on line 23, page 2, would have that effect? Do you agree with Mr. Lenroot that it would have that effect?

Mr. MONDELL. That it would give former claims a right to be presented to the court?

The CHAIRMAN. Yes. Is that your idea?

Mr. MONDELL. That is my opinion; yes, sir. I personally have not very much doubt about it. But, as I say, I am not versed in the law, and I do not pretend to know as much about those things as you gentlemen here.

Mr. RAKER. Right there, Mr. Mondell, if it will not interrupt you, is it not a fact these people are still in possession of this land?

Mr. MONDELL. I do not know as to the facts at all.

Mr. RAKER. May I ask somebody that knows. How is that, Mr. Johnson?

Mr. JOHNSON. They are claiming constructive possession, and they are holding actual possession.

Mr. RAKER. I just wanted to get into the record, in this connection, that as a matter of fact practically all of those people are claiming some physical, some actual, and some constructive possession.

Mr. MONDELL. I have no desire to argue any point with the committee. The committee does not, I am sure, want to argue with me.

Mr. RAKER. I am not arguing; I was trying to get the facts, so as to see whether that section did apply as to prior existing rights.

Mr. MONDELL. I am simply giving you my opinion, in order that you may consider these matters. My own notion is that the bill, as to the provision in the other bill under which the Secretary is to dispose of these cases before any lease is had, is better, and that should be done pretty promptly, because these cases have been before the department for years, and they have all the information they can get.

Mr. RAKER. If as a matter of fact one of these claimants was in actual possession of a tract of land, that it was leased by the Government, with this provision in the bill still remaining, that they may go into court and test the rights, there would be but little doubt but what the party in possession would go into court and test his whole right, would there?

Mr. MONDELL. Of course, I do not know how valuable they may think their rights are.

Mr. LENROOT. Whatever they were, they could test them.

Mr. MONDELL. They could test their whole rights?

Mr. RAKER. Yes.

Mr. MONDELL. I think when they went into court they could test every question.

Mr. RAKER. That is what I am trying to get at. In other words, that would open up the whole question in that case.

Mr. MONDELL. I think so.

Section 4 of the bill provides that—

> A person, association, or corporation holding a lease of coal lands under this act may, with the approval of the Secretary of the Interior and through the same procedure and upon the same terms and conditions as in the case of an original lease under this act, secure a further or new lease covering additional lands contiguous to those embraced in the original lease—

provides that the entire lease shall not exceed the maximum.

I do not know whether a provision of that kind is necessary or not. It occurs to me what would likely be done in that case would be to surrender one lease and take another. But I want to make this suggestion, that it would not be possible in such a case to secure the additional lease through the same procedure, and upon the same terms and conditions, because if a man desired to secure some land adjacent to him, and it was necessary in that case for him to compete with others for that land, it would be the merest accident if, he being the highest bidder, his highest bid was exactly the same

as it had been on the original lease. I doubt if the section is necessary, and I think it is not workable as it stands.

I think as to section 5, that was not really very important, and even less important than section 4. That provides for the consolidation of small leases, and, I think, as a matter of practice, the probability is in thise case that the parties would surrender their lease and take a new lease.

The CHAIRMAN. I would say, Mr. Mondell, when we were going over this and considering that the same thought occurred to me that you have now expressed, and I presented that with quite a good deal of zeal to Senator Walsh and Senator Myers, and the others who were present, and they were all quite insistent about the matter, that it would be beneficial to small holders, who were unacquainted at the start, after they became acquainted might want to associate themselves together up to the amount of one integral lease, and not allowing the association, altogether, to go over what one man was entitled to. In that regard it was thought it might be an actual benefit to the small operators.

Mr. MONDELL. That might be true.

The CHAIRMAN. That was their view of it.

Mr. MONDELL. And I have suggested changes in section 4 that would be necessary. Of course, there would be no objection. It might be an excellent provision. But it is clear that these supplemental areas taken in under a lease could not be taken in through the same procedure and under exactly the same terms and conditions. They could be under the same terms and conditions, because they could agree to accept the same terms and conditions, but the procedure could not be the same, in the nature of things. If the procedure was the same, then it would be a mere accident if the terms and conditions were the same.

Section 6:

That each lease shall be for such block or tract of land as may be applied for.

That seems to be in conflict with the provisions of section 3, which provides that the Secretary shall divide the tract into leasing blocks. Of course, if section 3 does not mean what I understand it to mean, that the Secretary is to divide this into working blocks, then there is not any conflict.

The CHAIRMAN. There is not any conflict now, Mr. Mondell, if you will read on. It says, "To be described by the subdivisions of the survey." While it does start out as if he could apply for a 10-acre block from one part of a 160 or 40, still they must follow the lines of survey.

Mr. MONDELL. You misunderstand me, Mr. Chairman. Of course, I had no thought that there would be any subdivision of the smallest subdivision of the survey—40 acres. But section 3 seems to provide that the Secretary shall divide this area into lease blocks of 40 acres or multiples, and shall ask for bids. For instance, if I understand that section correctly, he would say, "Here is a leasing block, 1,500 acres, and here is another one, 2,560 acres, the maximum, and here is another one of less. I want bids on those propositions." Now, if that is not the intent of section 3, then the language of the section is not clear and ought to be modified. If the intent is simply that the Secretary shall simply say that the entire Bering River field now is

open to lease, and that he will accept bids on any area in that field described in 40-acre tracts—if that is the intent, then your language is not clear. If, on the other hand, the intent is what I assumed it to be when I first read that, that the Secretary himself shall decide what the size of these various blocks shall be——

Mr. GRAHAM (interposing). The central thought in section 6 seems to be to prevent interlocking interests, it seems to me, and that is about all that is covered in that section.

Mr. MONDELL. It says that the lessee shall have such a block or tract as he may apply for.

Mr. RAKER. In other words, I understand from your contention now, Mr. Mondell, it is——

Mr. MONDELL. Not a contention, but a suggestion.

Mr. RAKER. Well, your suggestion, then, is that the man himself applying would have no right to designate the tract he wanted, as to size. In other words, he might want 1,500 acres, or 1,200 acres, or 160 acres, and the Secretary fixes it by the blocks, and he can not get any more than the Secretary designates.

Mr. MONDELL. That would seem to be a fair interpretation of section 3. But when you go over to section 6 the idea seems to be that he shall have such blocks—not only such area, but such territory—as he may desire within the maximum. I just want to suggest that, which ever the thought is, the language of the two sections needs to be somewhat modified. If the idea is that the Secretary is to simply subdivide the area and then call for bids for such an area as I desire to bid on, then section 3 wants to be modified.

Mr. RAKER. It is your idea that under section 3 it is really permanent as the Secretary fixes it, is it not?

Mr. MONDELL. That would be my interpretation of it.

The CHAIRMAN. How could you have a better plan than to let the Secretary fix up a schedule of tracts, then offer them in a certain way?

Mr. RAKER. That makes it that much more definite.

Mr. MONDELL. If that is your theory, Mr. Chairman, then you must modify the first two lines of section 6.

The CHAIRMAN. I am not sure but what that is true, but this thought wants to be preserved. The reason for that was that we were very anxious to give the little coal operators a chance along with the others. The thought was that the Secretary should not throw all of the leases and all of the schedules in tracts of four sections, or 2,560 acres, but on the theory that the little man, or the small concern, which operated on a small scale, could have an opportunity to lease a small area. But I think Mr. Mondell's criticism is probably good, in a way, because in the first instance the Secretary certainly has to plat this land off and survey it and offer it. Otherwise, how could he receive competitive bids? That being true, the first two lines of section 6, which seem to permit him to apply for any such tract as he wants, would be in conflict. We can correct that, and I am very glad you called our attention to it.

Mr. MONDELL. If I then interpret section 3 correctly, let me again emphasize this thought. It may be true that it may be possible for the Secretary of the Interior to find people so well informed, with such excellent judgment that they can see just what area an in-

tended lessee wants, but I doubt it. I have seen a good many coal operations started, and I never saw one started where there was not a very great deal of preliminary work before the point of attack was determined on, and I have seen well-intended and well-equipped plans fail utterly because of a faulty location, attacking the vein at a point where it was not possible to mine the coal economically, or where it was impossible to secure the proper lands for storage and for buildings.

The CHAIRMAN. Might I right there suggest—of course anyone would readily perceive that the Secretary would labor under some difficulty in that matter, but they are doing it in my State very successfully, and precisely in this way. The Secretary maps out a certain area of land he wants to let, advertises it through the papers, and the people bid for it. Some of them do not bid enough, then he has the alternative of relisting them, readjusting, readvertising them, and reoffering them, and he does it right along in leasing Indian lands.

Mr. MONDELL. Your veins, in the main, are practically undisturbed and lay in a comparatively small body, do they not?

The CHAIRMAN. That is perhaps true.

Mr. MONDELL. So that it would not make the difference that it does where a field is thrown in every possible and conceivable direction, and where, owing to the roughness of the country, there are comparatively few locations where the land could be successfully opened?

The CHAIRMAN. In the event he makes an error in the first offer there is nothing that would prevent him from reoffering the lands that were not accepted.

Mr. LENROOT. I would like to ask Mr. Mondell if he thinks it would be practicable in this bill to have the maximum lease, within 2,560 acres, take care of your suggestion in sections 4 and 5?

Mr. MONDELL. That is for the Secretary to block out some small holdings?

Mr. LENROOT. Something else than 2,560?

The CHAIRMAN. He would have to do that, and this gives him the power to do that.

Mr. MONDELL. Yes; that is true.

The CHAIRMAN. His idea is, and that provision is put in there with the express understanding and express purpose of enabling him to offer small holdings; in other words, to get up a group of 160-acre offerings, of one section, two sections, three sections, or four sections, so that it might be acceptable to different kinds of lessees, and then reoffering and readjustment could be made.

Mr. MONDELL. My own notion is that those things adjust themselves, and they will be adjusted in the ordinary course of business, rather better than you could do it.

Mr. LA FOLLETTE. Do you not think that that language in section 6 would be construed as having reference to 40 acres and multiples thereof; that the Secretary would advertise 40 acres, 1,200 acres, or 1,800 acres, whatever size he would advertise; and that this does not conflict at all, but it simply means that they can not exceed 2,560 acres of land, and that each lease shall be for such block and tract of land as may be applied for, according to the Secretary's advertisements?

Mr. MONDELL. Of course, if section 3 is to be interpreted as I supposed it was to be, and the chairman agrees with me, then those first two lines certainly do conflict, because you can not, in the first instance, offer a man a thousand acres and tell him he must take a thousand acres, and later say he may have such area as he desires. The two things conflict, one with the other. But that is a matter that you folks can work out.

Mr. LA FOLLETTE. My understanding is that this section 6 applies to the land after the Secretary has advertised it, and that they can apply for such blocks or tracts as he has advertised, not to exceed 2,560 acres.

The CHAIRMAN. The language that follows there, in line 3, page 4, that they are to be described by the subdivisions of the survey. That probably should be made clearer, and say according to the tracts contained in the schedule offered, or something of that kind.

Mr. MONDELL. Now, Mr. Chairman, section 7 makes it a felony for any person to purchase, acquire, or hold any interest in two or more such leases, and so forth.

The CHAIRMAN. Excuse me, Mr. Mondell. I have an engagement in five minutes, which I want to keep. You gentlemen might run along here as long as you like. I think it is entirely proper.

Mr. MONDELL. I would much prefer to conclude my remarks at some other time, Mr. Chairman.

Mr. LENROOT. I have an engagement also.

The CHAIRMAN. Then we will take a recess until 10 o'clock tomorrow morning.

(Thereupon, at 4.30 o'clock p. m., the committee took a recess until 10 o'clock a. m. February 24, 1914.)

COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Tuesday, February 24, 1914.

The committee was called to order at 10.20 a. m., Hon. James M. Graham presiding.

Mr. GRAHAM. Mr. Mondell, will you continue your statement?

Mr. RAKER. What is the number of the bill known as the Mondell bill?

Mr. GRAHAM. It is House bill 11616.

STATEMENT OF HON. FRANK W. MONDELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING—Continued.

Mr. MONDELL. When the committee recessed last evening I had made a comparatively general statement with regard to the bill, comparing it in a general way with the bill reported by the committee three years ago, which has been reintroduced as bill 11616, and then took up the bill by sections, making some some suggestions with regard to the sections, and we had reached section 7, which is a section making it a felony to purchase, acquire, or hold any interest in two or more leases. That section, of course, involves simply a question of policy. The reason for prohibiting the same parties being interested in more than one lease is to prevent monopoly. I take it for granted that if the coal could be sold as cheaply by parties having an interest in a number of leases there would be no special objection to it; but there is the danger of attempting to monopolize always when there is a community of interest in a number of operations in the same field. The bill, which I will refer to briefly as my bill, attempts to prevent interlocking directorates, or communities of interest, by making this joint ownership punishable by a cancellation of the lease. I think that is infinitely more effective than attempting to put some one in jail for attempting to combine interests.

Mr. RAKER. Mr. Mondell, before you go into that I would like to ask you a question.

Mr. MONDELL. Kindly let me finish. I want to suggest further that this, from a rather hurried reading of the bill, seems to be the only preventative and the only remedy; that while you put a man in jail for attempting to have an interest or obtaining an interest or securing an interest in more than one leasehold, the interest would remain, so far as anything I have seen in the bill is concerned. Therefore, you would not accomplish what you seek to accomplish; that is, to prevent this joint ownership. Later, in referring to the other bill, I will call attention to the provisions made in that bill to prevent the same individual having directly or indirectly an interest in more than one lease.

Now, Judge Raker, what was your suggestion? Or did I answer it?

Mr. RAKER. You answered part of it; but I was going to ask you what your view of the matter is, from the testimony given yesterday, as to the coal fields where there is only lignite in Alaska, whether drastic provisions should apply?

Mr. MONDELL. With regard to joint ownership?

Mr. RAKER. Yes.

Mr. MONDELL. The bill I have introduced, the general bill for the country at large, prohibits the same people from having an interest in more than one mine in the same competitive field, and that is as far as one ought to go, either in Alaska or in the United States. One of the difficulties of legislating with regard to Alaska is that, while our legislation will ultimately affect a great territory, a great variety of conditions, what confronts us now is the situation with regard to two fields, a comparatively limited area. This provision would not do in Alaska as a permanent provision, in my opinion, because when you come to operate over the territory generally you will find that oftentimes, in order to secure development, it will be necessary to get people who are interested in coal mining in one part of the Territory to interest themselves somewhere else, and there certainly can be no objection to that when you get outside of competitive districts. The bill 11616 contains more effective provisions, in my opinion, in these matters than the bill we have under consideration, but it was drawn with the idea that in the first instance in Alaska our legislation must take into consideration the fact that the first leases will be in the Bering and the Matanuska fields, but there certainly would be no objection—I see none now, at least—to the man having an interest in one of these fields later securing an interest in some field in the interior; but that is a bridge you can cross when you come to it. You are not going to reach it in these first leases.

Mr. RAKER. If it will not interrupt you, I would like you to turn to one subject with which you are familiar—possibly not in regard to the actual location of Alaska, but in regard to your own State, which, to some extent, has some of the characteristics of Alaska. I refer to the question of the location of claims. Now, it has appeared to me this way, and I thought about it in connection with this other bill, and I want to ask you this: If these tracts are blocked out, as provided by the bill, and the Secretary then advertises them for lease, is there not a possibility that one or two leases, because of the location of the mine, may practically give a monopoly of the coal fields of Alaska in these particular two places? That is, the Bering coal field and the Matanuska coal field?

Mr. MONDELL. Well, I am not familiar enough with the Bering River field to know how many opportunities for advantageous and economical development that field affords, but from talks I have had with people who are familiar with the situation and who have a practical knowledge of that field, I understand there are a considerable number of points at which the field could be advantageously and economically attacked.

In other words, there are quite a number of places where it would be possible to attack the coal with a drift, and where, adjacent to those locations, there is sufficient ground for shacks and buildings, both for the operation and for the operatives, but I am very strongly

of the opinion, and I do not care to go into that to tire the committee, that better results would be obtained—even in these two Alaska fields—if, instead of the Secretary attempting to block out the leasing areas, saying the leasing area of No. 1 shall contain so many acres and describing the acreage in No. 2, which shall be of a certain area, and so on, that instead of doing that, if we are to lease these fields on competitive bidding, and I am much inclined to think that perhaps, owing to the peculiar conditions there, that is the best thing to do, although I would not approve of it in the balance of the country, although that may be a good thing to do, I fear you will not get the best results if the Secretary himself blocks out the areas, and it seems to me it would be much better for the Secretary to simply advertise for bids, leaving it to the bidder to describe the area that he desired. Looking at it from the standpoint——

Mr. JOHNSON (interposing). You mean within the proper limits?

Mr. MONDELL. Of course, always within the limit, because that is a provision of the bill you could not get away from, and we would not want to get away from it because the limit is, in my opinion, sufficient. The limit is the same in both bills. That would give the operator an opportunity to examine the ground, the veins, determine as to their depth and location, pick out the place for his operation, and the adjacent territory that could be utilized from the openings he contemplated. It is of no value to a man to offer him a few acres of land in front of his opening and in the opposite direction from which he proposes to drive his tunnels. The land he must have is the land he can utilize from his openings.

Mr. GRAHAM. In very mountainous country, with the few places operated, the man who gets the favorable location would practically control the balance of the territory.

Mr. MONDELL. But my understanding is there are in the Bering field—and I presume in the Matanuska more—a number of points; quite a number of points, where the coal could be economically and successfully attacked.

Mr. RAKER. It ought to be attacked at each claim economically and successfully to work out the man's claim if he leases it.

Mr. MONDELL. Of course, if the Secretary is to block out these areas he must go in there and determine where, in his opinion, an opening can be successfully made.

Mr. RAKER. In that connection——

Mr. MONDELL (interposing). Let me finish, please. What the Secretary would have to do is this: He can not go into that field and say there are four sections of land here, and I will offer that at least; he must go in there and determine upon a point at which, in his opinion, an operation could be successfully initiated, in view of the dip, the vein, and the character of the country affording opportunity for tracts and buildings. Then he must block out an area that could be mined out from the opening at that point. Now, I doubt whether anyone the Secretary could employ could do that as satisfactorily as an operator could do it himself. If he simply advertised the field, called for bids for various areas, the operators would go in there and determine for themselves what areas they wanted, and there would be unquestionably some overlapping, so there would necessarily have to be some discretion with the Secretary to determine as to these

overlaps; and in the bill which the committee reported three years ago there is that discretion, and that is the only discretion which the Secretary has under the bill—the discretion to decide where applicants overlap and decide them in the public interest.

Mr. RAKER. Would it interrupt you to ask a question of Judge Wickersham?

Mr. MONDELL. No, indeed.

Mr. RAKER. Judge, what is the character of the land in the Bering coal fields?

Mr. WICKERSHAM. Mountainous and broken.

Mr. RAKER. Is it practically the same in the Matanuska field?

Mr. WICKERSHAM. It is not so bad there.

Mr. RAKER. But it is quite mountainous?

Mr. WICKERSHAM. But not at all like in the Bering River field.

Mr. RAKER. It is not?

Mr. WICKERSHAM. No, sir.

Mr. RAKER. Then, take the Bering River field for example, a man getting a location at the foot of the mountains or at the mouth of a canyon, or at a place easily accessible, would be much better off than the man back in the hills, which would be practically inaccessible for a separate mine, would it not?

Mr. MONDELL. Territory in a rough country, lying immediately back of a cropping and containing the extension vein that crops, must, of course, be worked, if it is worked economically and advantageously, from the cropping; but these canyons or valleys—and I am not familiar enough with the Bering River field to know which terms should be applied to them—run through the field and the veins are exposed at quite a number of points. Of course, in the nature of things, there are some locations more advantageous than others. That is true in any coal field on earth, and some one must have the more advantageous location than some one else. But if you let the parties free to determine as to their location and their areas surrounding it, on a competitive bid you get the very best bid obtainable under the circumstances, whereas if you block out an area which might not contain a point at which the vein could be successfully attacked, or, if it did contain such a point, did not carry with it a sufficient area lying back of the opening and in the direction of the entries, why, you would have to offer him what the ordinary prudent operator would not care to bid on.

Mr. RAKER. I want to present a case something like this to see if either one of the bills provide for it, and if they do not, what remedy you could suggest for its operation. Supposing, now, the first claim of, say, 2,560 acres is located at the base of the mountain covering the territory and the entrance comes at the lowest place in the canyons, where a drift can be run and the coal easily gotten out by dropping, and a claim lies adjacent but back of this operation on the mountain, the only way to get at it is through this drift or go up through the mountain and come down. How could you handle that?

Mr. MONDELL. As I said a moment ago—I did not say it, but I will now—as all the gentlemen understand, the cheapest way to mine coal is through a drift, and next to that slopings, and positively the most expensive of all, and the least satisfactory from many standpoints, is the shack. Now, from what I know of the Bering River field I assume that most of it can be mined with drifts that can be maintained

pretty nearly on the level or with the combination drifts and slopes in the same mine. Unquestionably, it would not pay anybody to go into a field like that, with the coal exposed, and be compelled to come to some point where it would be necessary to make an expensive shaft in order to mine the coal.

Mr. RAKER. Supposing such a case should exist, of course under the bill there is no way to get at that, except to go up on the side of the mountain and make a tunnel or a shaft and draw your coal up to get it out. Is there any provision in this bill—if not, ought there not to be one—that the man having a claim adjacent—B claim adjacent to A—that B should have the right to cross A's claim by tunneling or otherwise so as to get at his claim?

Mr. MONDELL. Both bills contain provisions under which one operator can cross the property of another, or under which anyone can get a right of way for any proper purpose. I think bill 11616 has the best provision with regard to that and the more all embracing, but the provision in this bill is probably acceptable. There is no difficulty about that because both bills provide for it.

Mr. RAKER. Very well.

Mr. MONDELL. But my suggestion is that it is difficult for anyone to select a location, a satisfactory location, for a coal operation for somebody else. If the committee will allow me, let me illustrate from my own experience.

A great many years ago I tried to and finally did locate a coal mine. It involved a year and a half of prospecting, because the vein was burned. It was not exposed at any point. I found a very thin vein of coal of high, fine quality, and the problem was to get that coal, to find that coal thick enough for a working mine, and it took a year and a half to do it. I found that, except at the point where we found the coal, it was burned out on both sides. I finally learned to follow the thin band of ash, which I learned to trace along the hill slopes covered with grass and timber and débris. I finally found that burned band seven miles from where I found the original coal and drove in on it through broken rock and a very dangerous drift for some 200 feet before we reached the vein, the point where the fire had been put out as the material above had fallen.

Now, it required months of examination, of driving, of prospecting to get the dip and contour of that vein and to study it with regard to the canyons that cut it in order to determine upon the point for successful operation. The point finally determined upon proved to be an excellent one, but we could easily have made an awful mistake. Of course, it would have been easier if our vein had cropped, but even where it does crop you can not always tell about its direction in the hill and its depth without a good deal of work, and those are things that must be determined before one can make up their minds as to the proper point at which to begin an operation. But it is of no value at all to give a man a lease of 2,500 acres for a large operation if the large operation of the 2,500 acres is so located that he can not reach it. It must be so located that he can reach it either from his initial opening or from other openings that can be worked in connection with the initial opening so that he shall not have his enterprise scattered in half a dozen different places with the cost piling up, as it does when you operate independent entries.

Mr. RAKER. In that connection, your statement has called a thought to my mind which is this: In this, say, 2,560-acre tract there could only be 600 acres of it coal land, as blocked out by the Secretary of the Interior. Can you see any reason why the Secretary of the Interior could not make a block to say that it should contain 2,560 acres of coal land as the maximum, although the entire claim might be 3,000 acres, 600 acres of it not being coal land?

Mr. MONDELL. My notion is that as these fields lie in Alaska you can probably get within the boundaries of a claim sufficient coal land for the operation in the area proposed, and even though you had a little land that was barren you would probably have enough for the operation. So any coal operation in Alaska to be successful and produce coal cheaply ought to have a daily output of 1,500 tons and pretty close on to half a million tons a year. You would mine out in the ordinary field 2,500 acres of that sort of an area in about 30 years. Of course the Bering field veins are thick at points. The probability is their thickness at certain points is due to the fact of compression, and that what you gain in thickness at one point you lose at another, assuming that that vein was crushel while it is plastic. That is a common thing. You find veins average 6 feet, and by pressure and roll run to 10 and down to 4 feet at another point.

Mr. GRAHAM. What you call folding in some places as much as 25 feet?

Mr. MONDELL. That is true.

Mr. GRAHAM. If you were to leave the selection of the land to the lessee, would it not likely have a great deal less value in coal, left out altogether, so that it might not be worked economically?

Mr. MONDELL. Now, Mr. Chairman, since I have read this bill I have not thought up to the time I read it of a plan of advertising for bids, and therefore I have not given that matter such thought as I might have done, but since I have read this bill I am rather inclined to favor that plan, at least at the beginning, owing to the peculiar conditions in Alaska, but if I were to do it I would advertise the entire field, allowing the bidders to make their bids on territory which they themselves selected, putting in another condition in addition to limitation, and that is of comparative compactness, and then leaving the Secretary that discretion not to give the lease to the lowest bidder, but to determine as to boundaries and to compel all of the bidders together to take in—that is, if the bids occupied contiguous territory—all of the territory, assuming that the territory was workable from the various points. That would be the same if it should meet that. I should allow the bid to cover the entire territory, the parties to determine just what acreage they want—of course, within the limitations—and in 40-acre tracts, following the land lines, and then considerable discretion in the hands of the Secretary to determine between bidders as to either the overlaps or as to the areas not covered, but possibly left out, by claims that really ought to be contiguous.

Mr. RAKER. Do you mean by that that all should be put up for leasing at once the first time?

Mr. MONDELL. Yes.

Mr. RAKER. Permitting the bidders to select the tracts themselves and offering their bids?

Mr. MONDELL. Yes.

Mr. RAKER. And then the Secretary to adjust it?

Mr. MONDELL. Yes, sir; that is the way I would do it.

Mr. GRAHAM. Do you think it likely that more than one lessee would go into the Bering field?

Mr. MONDELL. Of course, Mr. Chairman, that is entirely a matter of opinion, and I imagine the opinion of most any member of the committee on that question would be as good as mine. If I should be compelled to guess I should be inclined to guess that you would get two or three substantial bids in the Bering field. I have nothing on which to base that. It is a pure guess from my general knowledge of coal operations and conditions in Alaska. I am a believer in the good quality of this coal, and I think I know why it has not proved as satisfactory as we had hoped in some of the trials, but the coal is all right and there will be quite a demand for it in my opinion.

Mr. RAKER. And what does the gentleman from Wyoming say as to a probable market for the coal?

Mr. MONDELL. I think it would be very expensive myself if they can get it out. That is my view of it. I think it is a godsend to be able to have it so it can be opened up. If you can make the leases on terms and conditions that the people can go in there and get an opportunity to work it—in other words, if they are not compelled to pay too much for the initial cost of starting and locating and establishing their plant—I think it can be worked with advantage and profit.

I should doubt very much, Mr. Chairman, venturing purely an opinion again, whether, in the first place, Alaska coal would find very much of a market in California. I think it would have a pretty hard row to hoe there. They have the British Columbia fields with free coal nearer to that market, and they have oil competition, and all that sort of thing; but, leaving that aside, there is a very considerable market and a market that, curious enough, has been very little discussed. The whole western country needs coke. I tried to make coke in Wyoming at one time, and did make some, but it did not come up quite to the standard and we were not very successful in it. We sunk quite a bit of money, but we made the effort because of the demand for coke and the extraordinary high price of coke in the West. Coke is comparatively cheap down in the New River fields, but by the time you pay transportation on it across the continent the price is practically prohibitive.

There is no question about this coal being good coke coal, and Alaska has a lot of copper, and there is no reason why there should not be copper smelters in Alaska. Copper is about the easiest thing to melt that I know of. Outside of melting butter on a hot plate, there is no process that I can think of that is much easier than smelting copper, and there is no reason why you should not have copper smelters in Alaska, and there is a certainty that whatever coke is used you can, if you wish, secure it from Alaska, and there is no reason why the Alaska coke should not be cheap enough to get into the inland as far as the Montana markets. The Montana mine operators are now using coal for some purposes for which they

could use coke more advantageously if they could secure coke at anything like a reasonable price, so I am looking for quite a development in Alaska in the line of coke making.

Mr. BROWN. What do you pay for coke at the mines in Alaska? Do you think they would prefer coke if they could get it?

Mr. MONDELL. Well, there is a great deal of Wyoming coal sold in Butte and Anaconda and other Montana mining towns, and I suppose it would cost at the furnace anywhere from $3 to $4.50 for coal. Now coke in that region, I imagine, would cost $11 or $12 a ton.

Mr. GRAHAM. You have no coke coal?

Mr. MONDELL. There is no coke coal at all in Montana. There is comparatively little in Wyoming, there is but very little in Colorado, and my recollection is there is none in Utah.

Mr. RAKER. And this Alaska coal is supposed to be good coke coal?

Mr. MONDELL. There is no question about it at all.

Mr. JOHNSON. We are shipping coke from Butte, Mont., at $14 a ton.

Mr. MONDELL. I will have to change my statement there. Utah has been developing. I know you were trying to make coke there a number of years ago.

Mr. JOHNSON. We have been offered a new field, where we have been successful.

Mr. MONDELL. I am glad to hear of that. Brother Johnson says that coke is selling for $14 a ton. There is a great opening for Alaska coke far inland and in the interior, and the West has a great interest in this matter from the fact that is going to be our source of coke. We have coal to burn forevermore, but, unfortunately, there is not a great deal of it anywhere in that western country that makes a good coke.

Mr. GRAHAM. Is there any scheme by which oil can be used as a substitute for coke?

Mr. MONDELL. Yes; oil and certain kinds of coke are used to a certain extent to accomplish what ordinarily would be accomplished by the use of coke.

Mr. RAKER. But nothing has been found that is equal to coke for the purposes for which it is adapted?

Mr. MONDELL. For smelting, coke is necessary; there is no substitute for it. There has been a good deal of talk about electric smelting, but that has not come to the commercial stage as yet, and coke is necessary for that sort of thing.

Mr. GRAHAM. I do not recall whether you answered my question completely, but I think an answer to it is that under the circumstances you mention there would probably be a number of leases developed in Alaska.

Mr. MONDELL. That would be my guess, and I am frank to confess that that guess is not founded on a very complete knowledge of the situation. I would expect under any proper, reasonable legislation that you would get some pretty good size operations, and I am inclined to think you would get a few under lease—small operations—in the Matanuska and Bering fields. You would get many small operations in the interior.

Mr. RAKER. In the Bering field, for example, where the Government desires and this bill suggests the withdrawal of 5,000 acres, you think that that should not be? In other words, your idea is that the whole thing should be placed on a workable basis if there is enough people to come in there and work it.

Mr. MONDELL. I do not want to be contentious about that; I want to support the bill that the committee reports. My own notion is that it is unnecessary and it might be very unwise. In the first place, the man who goes into that country, with its frightful drawbacks, and they are frightful—and that is not any reflection on Alaska—delegates to himself a great undertaking to go into the Bering field and open a coal mine. That would be true anywhere on earth in a new country where you have to do everything, and, having had some experience in that sort of thing, I realize what a man is up against who does the first work, who makes the first roads and trails. He is going to make mistakes. He must plan out the style of mining, the sort of structures. He must determine whether it is necessary for him to hand-pick his coal and determine whether it would be necessary to wash a portion of it for certain purposes, and the probability is that his first structures, unless he is wiser than most men are, will be found to be at fault, and he may have to tear a lot of them down and put in new ones, and he is going to run up against a lot of things, and he has his market to make also. He is a pioneer in the real sense of the word, and you must not lay burdens on him that are so severe as to discourage him.

I think you can get several operations in the Bering field under a recent law, and if you make one of the covenants of your lease the proposition that there shall be no monopoly in coal, that it shall be sold to all comers for the same price for a like profit, under similar terms of delivery, you will prevent monopoly infinitely more effectively than you will by having reserved a piece of Government coal land, and if you further make it one of the conditions of the lease that the Government shall have the right to purchase that coal wherever found at a reasonable price you will have provided for the Army and the Navy infinitely more effectively than if you had reserved some of these coal lands. If you came right up against a real necessity for the Army and Navy the necessity would be over before you could open a mine.

Mr. RAKER. How long would it be before they could get the coal out and store it before it would be useful? How long would it be stored?

Mr. MONDELL. If you are going to sell coal cheaply it ought not to be stored at all, because that adds to the cost.

Mr. RAKER. How long would that coal stand properly stored before the weather affects it and deteriorates it?

Mr. MONDELL. I do not think the elements would particularly affect that coal. I imagine good bituminous coal is not seriously affected by the elements more than most of that coal is often badly mauled and rolled.

Mr. RAKER. Will it last 10 years?

Mr. MONDELL. Good bituminous coal is good for a hundred years.

Mr. RAKER. After it is mined out?

Mr. WICKERSHAM. It will last a lifetime.

Mr. MONDELL. Any coal that is affected by the air is first a lignite coal and disintegrates, and it disintegrates because of the great amount of moisture in it that evaporates.

Mr. RAKER. What I was trying to get at is this: None of this Bering coal is reserved, but if the Government wanted to keep a supply on hand, say half a million tons, and use it at any time it was needed, would that be much better than to have a coal field reserved?

Mr. MONDELL. There is no doubt but that any operator in one of these fields would be delighted to mine and reserve coal for the Government, and there is no question but that that coal would be good coal.

Mr. RAKER. Would that be cheapest in the long run?

Mr. MONDELL. I think it is the only practical way.

Mr. RAKER. By reserving an area of coal land, if you needed the coal for Navy purposes and you simply have the coal bed reserved, as you said a moment ago, the necessity may have passed before you can get your operations working and get your coal, whereas if you have a lot of coal on hand with the operators in the field and give the Government the preference right to it, you have a supply of coal on hand all the time.

Mr. MONDELL. In the bill, at section 2, the reasons for the reservation are stated in the last three lines—"or is required by the Navy or is necessary for national protection or for relief from oppressive conditions brought about through the monopoly of coal." All of those purposes can be very much more certainly accomplished and secured in other ways than by reservation. First, your supply for the Navy is short. If you only had mines open and operating, you would have a right to take the coal wherever you find it and pay a fair price for it. The relief from monopoly is to be found in conditions placed in the lease, under which an attempt to monopolize renders the lease subject to cancellation, having that threat to hold over the lessee at all times, with the certainty of its being enforced if he violates it. You accomplish this purpose, I think, very much better in this way.

Mr. GRAHAM. Would you suggest an amendment to the bill to reach that particular end, requiring such a clause to be inserted in it?

Mr. MONDELL. A little later I will read the very excellent section in the other bill, which, I think, contains the covenants that ought to be in the lease.

Mr. RAKER. Is there any possibility within a reasonable time, if there is no reservation to the Government, to work it all out so that the Government would have none there when it wanted it?

Mr. MONDELL. I assume, if there is coal in Alaska that is needed, everybody wants to have it used, and as long as it is used economically and advantageously, no one has any desire of withholding it from those economic uses in the fear that some day we may be shy of fuel. That is conservation that I think no one would propose or approve. As long as it is put to useful purposes, we all desire it shall be used as largely as possible, and I think no one would suggest reserving from needed use this coal in the fear of some distant future.

Mr. LA FOLLETTE. If the Government held 5,000 or 7,000 acres in either one of these coal fields, that would not prevent the Government from storing as much coal and buying from these miners as much as it pleased?

Mr. MONDELL. No, sir.

Mr. LA FOLLETTE. It would not affect the coal fields or the Government. Therefore, if they want it for any purpose, they could reserve a little interest in a field that was undeveloped that they could use at any time.

Mr. MONDELL. The gentleman should remember the Government is reserving all this coal. We are not parting with a single acre.

Mr. LA FOLLETTE. It goes out of the Government's hands for 20 years if a man has a lease.

Mr. MONDELL. It does not go very far out of the Government's hands. It simply goes out of its hands to the extent of passing it into the hands of some fellow to do the hard work and get the coal; but if we reserve the right to use it after he has dug it out, it seems to me that is the only right we need to reserve.

Mr. LA FOLLETTE. I can not see where the Government or the people operating in the field would lose anything by having a few thousand acres of it reserved, and it would not prevent them from selling just as much coal to the Government. I do not see where the drawback would be in the Government having a few thousand acres of coal land there if it was not leased or disposed of.

Mr. MONDELL. There will be plenty of this coal reserved. There will be infinitely more of it reserved than is leased in the next hundred years. The only question is whether you want to burden the first operator who must meet all the conditions of new operations—whether you are going to burden him by compelling him not to take the best opportunities for development, but possibly to go back or beyond and around some reserved territory and content himself with areas that will be very much more expensive to mine.

Mr. LA FOLLETTE. That, then, is your belief in the lack of wisdom in this clause, that it might possibly be taking some area where it would be in the way of some man's operation of a coal mine?

Mr. MONDELL. My idea is that if you want to get large coal operations in these fields in Alaska under conditions that will make large development possible, you must give someone the best opportunities that are present there, and if you reduce these opportunities by selecting and withholding the best part of the field you will probably get a lower bid to begin with and you may have difficulty in getting any reasonable bid.

Mr. LA FOLLETTE. You are going on the hypothesis that the Government will take the cream and leave the skimmed milk for another fellow.

Mr. MONDELL. If I was a Government official and charged with this responsibility I would go in and reserve the very best locations in both of these fields. I would feel that I had not done my duty unless I did it.

Mr. GRAHAM. I think, Mr. Mondell, in that respect, there are several locations, at least a few, that would probably be equally desirable. I suppose you know that some of this field is already partly developed?

Mr. MONDELL. Yes.

Mr. GRAHAM. And, of course, the fellows on the ground first—in other words, the Cunningham claim, combines probably the greatest number of desirable features, the strategic location with the view of getting to them, the body of coal as coal, and the engineering prob-

lems connected with the work, all these were considered, and each of the tunnels have been driven quite a distance in that field.

Mr. MONDELL. I imagine in the Cunningham claims—I say this without knowing much about them—there are several points where mining operations could be successfully undertaken. Of course, it is not at all possible that the entire areas contained in the Cunningham claims, or any considerable portion of them, could be worked from their own entry. Probably quite a number of independent operations would be possible and necessary even in those claims, and my notion is that if you left the applicant free to describe his own area you would find few lessees, if any, who would ask for the maximum area, because there is no particular advantage in a man asking for an area beyond what he can work out within the period of the lease or within the period during which he is to pay the price first fixed.

Mr. GRAHAM. As I understand the lay of it there, in the maximum area of four sections or two miles in each direction, you would necessarily find a great many breaks and separations in the coal field.

Mr. MONDELL. There would be no advantage at all to any operator in having any areas that are not accessible from his opening.

Mr. GRAHAM. Unless the man was in a position that he could afford to put in more than one set of improvements and work a number of drifts at the same time.

Mr. MONDELL. That is true.

Mr. GRAHAM. The thought I was going to call your attention to a moment ago was this: Under the language of this bill, while I agree with you, there will be a great deal of the Bering field that will remain in the hands of the Government—that is, it will be unleased—but would the Government under this bill have any right to work land that it had leased, and would not Congress have to make a specific provision giving the Government the right to work in any particular part?

Mr. MONDELL. I think that is true. I do not want to be contentious about that provision of withdrawal and reservation. In my opinion, it is entirely unnecessary and might be found unwise.

Mr. GRAHAM. There is no conflict between it and your thought, and it seems to me they could both be embodied in the bill to advantage.

Mr. KENT. Do you object to the possibility of the Government mining one mine? Do you object to giving the Government that opportunity if it wants to exercise it?

Mr. MONDELL. That involves a very large question.

Mr. KENT. I would like to know what your position is. You were talking about this paragraph. Do you object to the Government doing that?

Mr. MONDELL. I am not talking against that part of the paragraph which gives the Government the right to mine coal. My argument was to the proposition of reservation as not being the best way to accomplish the purposes.

Mr. KENT. Can it be accomplished in several ways? I agree with you fully that the Government ought to make leases subject to topographical surveys by the people who are going to operate. I agree with you fully on that; but I want to know whether it is your opinion

that the Government ought to cut itself off from the possibilities of operating?

Mr. MONDELL. I do not think the Government would lose anything by refraining from operating coal. I think that all the coal the Government wants it can purchase much more cheaply than it can ever mine. You take the bituminous coal of the United States, and there is no article I know of that is sold at the pit mouth so cheaply, compared with the labor that goes into it, and our scientific bureaus are constantly lamenting the fact that coal is so cheap under intense competition that the operators have difficulty, or find it burdensome, to adopt methods they ought to adopt for safety and for economic use of the coal.

Mr. GRAHAM. Competition is so keen that in my own State, and even in my own district, the mild weather we had up to a week or so ago has compelled several mines to shut down, in financial straits at that. There is very little profit in that class of coal.

Mr. MONDELL. That was the condition in our State, up in the northern part of the State, until the recent cold snap, and there is the constant temptation to rob the property and not get all the coal out, because after the operator gets to a certain point it costs him more to get the coal out than he can sell it for.

Mr. KENT. That all tends to the fallacy of the proposition of private ownership of coal, because every man who owns a coal mine finds he has to make his dividends out of that coal mine, and there is too much competition and it is wasted.

Mr. MONDELL. That is the way it appeals to you, but it appeals to me in exactly the opposite way. It shows the wonderful efficiency of private operation—the intense competition that compels men to purchase at the least possible cost and that gives the product to the user at the lowest possible price.

Mr. KENT. By wasting the coal and destroying the life of the workingman.

Mr. MONDELL. That is only true to a certain extent; and on the other side of it, if you raise the price of the coal by 50 per cent or 100 per cent, you have to think of the widows and orphans and people of very limited means, who, in weather like this, have hard times in getting coal, even at the present prices, to keep themselves warm. There are two sides to it.

My suggestions with regard to section 7 apply to section 8. I do not think that is the best way to accomplish the purpose sought. Section 9 contains the provision with regard to royalty, which shall not be less than 2 cents per ton. The lowest royalty in the bill, to which I have been referring, is 3 cents per ton, and that only for a short period. This section of the bill should, in my opinion, be amended somewhere along about line 15 by providing the character of the coal on which you base your royalty, whether it is coal mined, as provided in the other bill, which would mean run-of-mine coal, or screen coal, and also you should designate the tons, whether long or short ton; otherwise there would be immediately a lot of questions as to what your royalty really was. A royalty on run of mine of 2 cents or 3 cents or 4 cents on a long ton would be very small royalty compared with the royalty on screen coal on the long ton and small royalty compared with the royalty on run of mine on the short ton. We use the short ton.

Mr. GRAHAM. Run-of-mine coal at 2,000 pounds to the ton is what it ought to be.

Mr. MONDELL. That is the most satisfactory, Mr. Chairman, in view of the fact that then there is no question about screening.

Mr. GRAHAM. Exactly.

Mr. MONDELL. And the short ton is the ton used altogether in sales.

Mr. GRAHAM. And the men are paid on the 2,000-pound basis on the run-of-mine coal.

Mr. MONDELL. I make this suggestion also with regard to this paragraph: That in my opinion the acreage list, the list per acre, should not be fixed, at least not until after the first two or three years, but should be a minimum. The maximum contained in the offer, along with the offer of royalty, should be left to be determined by the Secretary.

Mr. RAKER. If you are going to pay the men back, why have a list at all?

Mr. MONDELL. Here is the reason for it: In the first place, you do not want a man to list more land than he needs, and the only way to discourage him is to put an acre rent on him, and one of the best ways to keep down your acreage applications and to compel mining is to fix a reasonably high rent.

Mr. GRAHAM. And after the mine gets to operating it is in the nature of a minimum annual rent.

Mr. MONDELL. And it is constantly prodding the fellow to get out some of the coal. The other bill makes the maximum $4. The maximum here is $1. I do not say the maximum $4 is a correct maximum.

Mr. KENT. It is better than $1.

Mr. MONDELL. There are several ways in which you can adjust this, either to absolutely fix a minimum and a maximum, or to fix the rental absolutely without maximum or minimum, or have the proposed rental one of the propositions contained in the bill, and it seems to me in view of the fact that you are going to call on the man for bids on the basis of royalty he should know absolutely what the other factors are, and that therefore you must fix this rental as you have fixed it, but I think you fixed it too low.

Mr. KENT. It is absurd, it seems to me, to put a definite rate there. It depends upon the amount of coal they have in storage. One man may have a lot of lignite and also a lot of good anthracite stored. It ought to bear some relation to the tons of coal he has stored and to the value of the product.

Mr. MONDELL. The other bill has a maximum of $4. I think a maximum of $1 is too small. I think you need that additional spur to keep the operator going in dull times; that he has to pay so much anyway, and he better be getting some coal out, because he has to pay for it whether he gets it out or not.

Mr. GRAHAM. Suppose he mined a thousand tons a day for 200 days a year, that would be 200,000 tons of coal a year. Two cents a ton would be the royalty. That would be the minimum. He ought to take that amount of coal out. If he does not he will hardly survive. That would absorb an acre rental of $4,000, and $2,560 a year would be at the rate of $1 an acre on the maximum amount of land. Two dollars would be $5,000. The thought in my mind was that the acre rental ought not to be so great that it would require him to pay more

than the royalty the tons amounted to on the fair minimum annual output.

Mr. MONDELL. I think that is the theory on which the rent should be based, and my thought was that the dollar an acre was probably two small.

Now, the bill in section 8 provides for leases for indeterminate periods. The leases provided for are indeterminate in their periods. I am inclined to think that is a very good proposition. I think it is better perhaps than the fixed period that was provided for in the other bills. Of course, there are some objections to it.

Mr. WICKERSHAM. Was the period fixed in the other bill on the theory that the 30 years would work out the mines?

Mr. MONDELL. Yes. I want to say, though, the 20-year period, in my opinion, is too short, and I think you can demonstrate that very readily by figuring a little on what operation it ought to be successful. My belief is that no operation in the Bering River field or in the Matanuska field, no considerable operation—I am not referring now to some small mine that might be opened at a very small expense to furnish coal locally or to furnish coal for some specific purpose, but I am speaking now of the commercial operations that would be necessary—would pay there that would not have an output of 1,500 tons a day. I do not see how it would be successful at any reasonable price for the coal that would be mined on the basis of a 6-foot vein; and while your veins are very thick and numerous up there, after all you will probably find it is a pretty good country that gives you 6 feet of coal under every acre. On the basis of a 1,500-ton operation it would work a maximum 6-foot field out in 30 years. That was the line of thought we had in mind when we fixed the period at 30 years. Twenty years is a pretty brief period, as coal mining goes. There is many a mine that is not under way in less than five or six years. It does not begin to get its gait, and the probability is that at the end of that time, or before, you have to renew practically all of your structures.

I have known some very elaborately developed mines, but I think I have never known one, no matter how much thought and care was devoted to the first development, that did not require within a short time very substantial changes, improvements, and betterments. These changes are likely to continue right along for the first 10 years of the operation. In fact, they go on forever, and the ordinary mine can not be expected to return the cost of its structure and its dead work in less than 25 years, I should say, at the very least, and my notion is that 30 years would be nearer the period within which you could expect to so handle an operation as to get a return on the investment without unduly loading the cost of the investment on the coal as you got it out; and, assuming this coal must be sold in a competitive market—and it certainly must; the greater part of it—the lessee must know that he has, without a change of royalty, a sufficient time to practically work out what you might term his first enterprise; and if he has some right good veins and has no more than 1,000 or 1,200 acres, why, at the end of 30 years of good operation will only find him well under way; but he ought, by that time, to be in position where he can stand a readjustment, but I doubt if he could in a shorter period.

Mr. KENT. I thought you said 30 years would work a mine out. Now you say it would take that time before he would be in good running shape.

Mr. MONDELL. I said that was based on the average vein of 6 feet with a maximum acreage and a maximum output during the entire period. Of course, those factors will never be presented—all of them—in any one operation. That is just a sort of a general average, but with the dull seasons and the periods during which you mine comparatively little coal the increased volume of the coal, the increased thickness of the veins, and all that sort of thing you would probably, in the Bering field, be in the condition I last described with a good property at the end of 30 years. These people are pretty likely to have some rather lean years to start with. That is very likely to occur even in a country with a developed market, and they have their market to make.

Section 10, I think, with some modifications, is very excellent. I think it ought to be made very easy for any one who wants to mine a little coal for their own use or for use in connection with a little mining operation to open a mine, and I think it would be well to provide very clearly for records of all these cases. I think it would be a good thing for Alaska to know, for the people operating, and for the people of Alaska generally to know where those operations were and to know how much coal they produce. I do not think they ought to pay anything for it.

Mr. WICKERSHAM. Do you not think that that might be extended so as to give municipalities a small tract of land for the benefit of the people of the whole municipality?

Mr. MONDELL. Certainly; and I would increase the acreage to 40 acres. We do not do business under the land laws on less than 40 acres, and this would be an acreage based on the survey of the country, and in that case the operator might find the exposure of his vein was at the edge of another tract and his tipples and his loading appliances be on land that some one else might claim. We are not doing very much for people if we leave them mine coal on 40 acres, and, of course, that would apply most generally to the lignite operations. I think that section could be extended and modified so as to make it more beneficial.

Mr. MCKENZIE. What would be the objection to allowing a community to take one of these leases?

Mr. MONDELL. Section 3 of this act provides for any applicant, individual or associations of individuals, who are citizens of the United States.

Mr. MCKENZIE. Would that include a municipal corportion?

Mr. MONDELL. I must leave that to those gentlemen who are more learned in the law. It ought to. If it does not it ought to include practically anyone who wants to mine these small liginite veins. They do that to a certain extent without let or leave, or they did until the sleuths of the Interior Department got after them recently and shut down many a small operation in the interior of Alaska.

Mr. JOHNSON. If they were required to obtain it by lease that would involve a payment.

Mr. MONDELL. I am suggesting they ought to come under section 10, and I do not pretend to say whether they do.

Mr. RAKER. In other words, there would be no objection to including the municipality under section 10, provided that they might have the lease of coal lands without charge.

Mr. MONDELL. As to the matter of charge, I do not think that is so important. I am not so sure that would be specially objectionable. You do not want the idea of raising any revenue from these small operations, but I think it would be a very excellent thing, from everybody's standpoint, to know where they are, and I should hope an application of this sort would be granted without question whenever made on the theory that no one could possibly mine coal in Alaska without putting it to some useful purpose.

Mr. RAKER. The only way to remove any question in regard to it is to specifically provide for it in the bill.

Mr. MONDELL. Some one suggested that you might, in addition to that, provide that this shall not be waived, repealed, or otherwise nullified by executive action. I do not know whether that is necessary now or not in the statutes. A very distinguished gentleman has said that in the absence of a positive prohibition there rests in the Interior Department the power to set aside statutes. I never subscribed to that doctrine, however, although I have seen the doctrine enforced.

Mr. LA FOLLETTE. On the theory that the Government should not reserve any coal lands, why should a municipality, which is a small Government, reserve coal lands and mine it for themselves?

Mr. MONDELL. I said to the gentleman I did not want to be contentious on the question whether we shall reserve some of the coal or not. I think we are reserving it all. We are certainly reserving it all under the lease system, and I think you can easily overdo the reserve business from anybody's standpoint. Of course, if the Government wants to mine coal and the people want to mine it, it is not for me to say them nay. I do not think anybody is going to be advantaged by doing it. That is my notion. I am one of those who think we can do anything and ought to do anything that is going to be of real advantage to the people, but I am not anxious to have the Government do things just simply to be doing them, without regard to whether they are going to be beneficial to the body politic. So my objection to the reservation is simply that it does not seem to me to accomplish what seemed to be in the minds of those who drafted the provision, but I would not oppose the bill because it contained this reservation.

Mr. LA FOLLETTE. I can not but think that it is a wise precaution, and I do not think any arguments the gentleman has made against it are tenable.

Mr. MONDELL. I am satisfied that there are some people so fixed with regard to their objections that nothing would be held as an argument against them.

Coming to section 11, it starts out, "That any lease, entry, location, occupation," etc. That is on page 6. Then, on page 7, the same section contains the same words. My suggestion is that unless there is some reason for the use of those words that has not occurred to me that they should be stricken from the bill. There is no entry and, strictly speaking, no location contemplated. Under the bill it might be difficult to determine what that language meant.

Mr. LENROOT. Section 10 does not contemplate a lease. It is a license or permit rather than a lease.

Mr. RAKER. It gives a definite period of 10 years.

Mr. LENROOT. But the language is "license or permit."

Mr. MONDELL. But section 11 says "any lease, entry, location, occupation, or use permitted under this act shall reserve to the Government the right to grant or use such easements in, over, through, or upon the land leased, entered, located, occupied, or used." You do not want to assume any language in the bill that describes something that can not occur under the bill.

Mr. LENROOT. My point was whether the lease would be broad enough to cover it.

Mr. MONDELL. The words "lease" and "use" are employed. "Lease" covers the one and "use" the other.

Mr. LENROOT. What would you suggest?

Mr. MONDELL. I would say the words "entry" and "location" probably ought to be left out, and I am not so sure but what the word "occupation" should also be left out. "Lease" and "use" are the only two things contemplated in the bill, as I read it.

Mr. KENT. How about "occupation"? Supposing a claim was invalid, an existing claim, would that not then cover that?

Mr. MONDELL. This bill does not contemplate any operations on lands in private ownership, or where a claim has been invalid.

Mr. FRENCH. I do not know that the word "entered" is absolutely necessary, but I do not think that any one of these words has such a technical meaning that it is inconsistent with the bill.

Mr. MONDELL. The gentleman has had a great deal of experience in land laws, and he knows this: A man who never read this bill, if called upon to construe it would have a very serious time determining what Congress had in mind when it talked about an entry under the law that has nothing to do with entries. I think that is simply an oversight. I never saw—I am sure I never drafted a piece of legislation myself—and it has never been my good fortune to see a piece of legislation that when you had to go over it frequently and critically that you did not find some terms that did not seem to altogether fit the situation, and I think that is true with these terms. I do not know that it is a vital matter, but, of course, it is not wise to talk in legislation about things you are not proposing to do in the legislation. Someone might insist there was a right to locate here. There is no preference right of location contained in the bill. Therefore, the use of the word is questionable. There is a "lease" and a "use" one referring to the general leases; the other referring to the price under section 10.

Mr. LENROOT. Section 11 implies a contract with somebody, and the only terms used are "leases" and "licenses" and "permits."

Mr. MONDELL. Yes. I am simply calling these things to the attention of the committee.

Mr. RAKER. Referring back to the question I asked you some time ago, which was called to my attention by Mr. Brown, that section 11 would give the lessee A an opportunity to cross lessee B's line, if the location of his line was such that it became necessary, this section does not give him this right. It is only when the Government desires to use it.

Mr. MONDELL. It says: "Reserve to the Government the right to grant." Now, just skip the balance of it.

Mr. RAKER. I have.

Mr. MONDELL. "As may be necessary or appropriate to the working of the same or other coal lands." In other words, the Government reserves not only the right to use, but the right to grant.

Mr. RAKER. "Under authority of the Government, and for other public purposes."

Mr. MONDELL. Let me read it again: "Right to grant or use such easements in, over, through," etc., "as may be necessary or appropriate to the working of the same or other coal lands."

Mr. WICKERSHAM. Under the authority of the Government.

Mr. MONDELL. That if I were the lessee of a tract and desired a road over the land of an adjacent lessee I would apply to the Government for the right of way, and under this provision the Government would grant me that right of way.

Mr. RAKER. That expressly limits it. If you cut it off right there at the end of the line it would be all right. It says "By or under authority of the Government, and for other public purposes."

Mr. MONDELL. If the gentleman wants a good statement in regard to that I will refer him to the other bill.

Mr. RAKER. What particular langauge in the other bill, because it seems to me that is important? For instance, A is a lessee and also B, their lands adjoining, and it becomes necessary for B to cross A's land, which is leased. He ought to have that right and there ought to be some provision in the bill so as to give them all access to the land.

Mr. MONDELL. The other bill provides what this should do in some way, that the lessee controls the surface. The other bill, after making that provision, refers to the right of Alaska to furnish and extend roads and highways, and then in section 10 of the other bill, pages 8 and 9, it says: "The granting by the Secretary of the Interior of such rights of way across such land as may be necessary for use in the production, handling, and transportation of coal and other products of Alaska."

Mr. RAKER. He may, through tunnel and otherwise, enter his land and cross it. We ought not to compel him to go into court to acquire that right.

Mr. MONDELL. But under this provision clearly the Secretary of the Interior would have the power to grant him the right.

Mr. RAKER. Notwithstanding he leased it to the other party?

Mr. MONDELL. I think the other provision meets that. I like the provision in the other bill better; first, because it contains a provision which relates to the territory of Alaska, giving it certain power that it ought to be allowed to exercise over all public lands; and, second, that the Secretary may grant any right or easement necessary for those purposes of any sort.

Mr. RAKER. And you think that is provided by that provision?

Mr. MONDELL. I think it is certainly provided in the provision for section 10 of H. R. 11616, and I would be rather inclined to think it was covered by the provisions in this bill, all except that part which relates to the local authorities.

Mr. KENT. Mr. Raker brought up a big proposition—that is, whether or not there shall be anything in there which should provide for joint use of tunnels.

Mr. MONDELL. That is something that would not be reached for a long time in any coal operations.

Mr. KENT. It might be reached right away. One concern might say, "We are going to mine here"; and another could not get out coal except through this joint tunnel.

Mr. MONDELL. No one is going to drive a tunnel except into coal, and no one is going to drive a tunnel unless they have a good long stretch of coal ahead of that tunnel. Tunnels are expensive propositions.

Mr. RAKER. Suppose they did join it. Are they prohibited under the provisions of this bill?

Mr. MONDELL. Not under the provisions of section 10 of No. 11616. The gentleman is just as good judge as I am.

Mr. RAKER. The gentleman is clear that it ought to be provided, if it is not.

Mr. MONDELL. I do not think this language is particularly happy. It certainly does not cover the local situation, and it perhaps does not fully cover the general situation.

Now, section 12 of the bill is important and interesting because it departs very radically from the theory on which the bill seems to have been drafted. The bill in its preceding sections was evidently intended to prohibit and prevent under very heavy penalties, fines, and imprisonment against joint ownerships or interests, but section 12 places in the hands of the Secretary of the Interior authority to allow all lessees in Alaska to pool their issues and to join in operations.

Of course, that is a question of policy. If we had gone on the floor of the House three years ago with a bill containing a proposition of that kind, I imagine more fur would have flown than did. Of course, we have a Secretary of the Interior now in whom we have very great confidence, but we must not enact laws in view of the personal characteristics of the man who for the present would be charged with responsibility. We might have secretaries, and even the present Secretary might not be the best judge in the world of whether combinations ought to be allowed.

Mr. RAKER. Is it your contention that the Secretary could approve of two or more parties holding under other provisions of the bill more than 2,560 acres?

Mr. MONDELL. Why not?

Mr. RAKER. Is not this to be read in and considered part of the other provisions preceding in the bill to be considered with this provision?

Mr. MONDELL. If they are, then why this provision? If you are not going to give the Secretary authority that is not contained in the bill, why this provision? If this is not intended to allow combinations of leases, then why the provision?

Mr. LENROOT. Not exceeding 2,500 acres; previous provisions to the bill do allow combinations of leases.

Mr. KENT. That is splitting hairs.

Mr. MONDELL. I do not think it is splitting hairs, if this provision is what I think it is. I am not criticising it especially; I am calling

it to the attention of the committee. The bill is framed on the theory that we must send men to jail if they even attempt to consolidate their interests. If that is the theory, I am frank to say I do not believe in those provisions of the bill. I do not think they will accomplish their purpose; and if that is the theory, then I suggest there should be some care given to the consideration of the provisions of this section, unless you want to give the Secretary some authority to allow those things to be done that are not only prohibited by the other provisions of the bill but prohibited with the very severest pains and penalties.

Passing to the next section, the section with regard to the enforcement of the lease and the provisions of joint regulations, my idea is that every requirement under lease should be clearly set forth in the law, and that therefore that section might very properly be amended. Section 14——

Mr. KENT. You think, Mr. Mondell, that we should draft all the rules that the Interior Department is to enforce in this bill, and not leave any flexibility at all?

Mr. MONDELL. I think this: I think that when a man takes a lease, Mr. Kent, the covenants and the conditions of the lease should be clear.

Mr. KENT. There is no doubt about that.

Mr. MONDELL. And when a penalty for their violation may result in the loss of a million dollars worth of property or half a million dollars worth of property——

Mr. KENT. When he takes the lease from the Secretary of the Interior he has to accept or reject, not to make his own terms.

Mr. MONDELL. I understand that, but a man might—you can readily understand, after he had bid and agreed to pay a certain price as a royalty, conditions might be required of him which it would be difficult for him to comply with. I do not say there must not be regulations; there must be, but their basis must be fixed in the statute.

Mr. KENT. It must be flexible. Either you must have an inflexible law that goes through everything or else you must allow a certain amount of play or flexibility with some one.

Mr. MONDELL. Then, my objection to that section is, further, that it contains only one of the conditions and covenants of the lease, when, it seems to me, they all——

Mr. LENROOT. I do not quite get the point you are making in regard to "only one" grounds of forfeiture, did you say?

Mr. MONDELL. Here is forfeiture on the ground of failure to comply with general regulations.

Mr. WICKERSHAM. Past, present, or future?

Mr. MONDELL. The question is what they are. I can illustrate a little better what I mean when I get to a section of the other bill, which I will pass to very soon.

Mr. KENT. It seems to me, Mr. Mondell, this comes up to a proposition a man has to meet when he has an agent to do the best he can in making a lease for him.

Mr. RAKER. Mr. Kent, will not this cover it, if there was a provision in the bill that such regulations shall be promulgated before any leasing made under the provisions of this bill? Then the party, the bidder, would know exactly what the rules and regulations are and what the provisions of the bill should be.

Mr. KENT. Anybody with a little bit of sense should insist on knowing what the regulations are before he bids. I should think that the Secretary of the Interior must lay down his regulations before asking for leases.

Mr. RAKER. I see.

Mr. MONDELL. The bill, I think, would make that very clear. I think the section that contains the limitations and covenants of the lease should contain them all, and that we should have grouped and condensed the requirements of the limitations and the covenants and the method of procedure.

Mr. RAKER. Not necessarily in the bill, but the regulations provided in the bill should be promulgated in advance.

Mr. MONDELL. I think it is better to have it in the statute, and I think it is very easy to have it in the statute. There is a section here in the other bill that contains all, I think, anyone would say is necessary.

Mr. RAKER. Do you believe that in every field the terms of the leasing should be the same?

Mr. MONDELL. Not by any means.

Mr. RAKER. If we should put that in the bill, we would have to have it uniform.

Mr. MONDELL. The basis for regulations should be the same in all fields. In other words, there are certain things that the Secretary of the Interior ought not to be allowed to issue regulations relative to. There are certain other things that it is necessary that the Secretary should attempt to regulate, and it seems to me when you are entering into a contract of this kind the lessee should have a pretty clear and definite knowledge of the field within which the regulations may be promulgated. That is my suggestion.

Mr. KENT. That is so in the bill.

Mr. MONDELL. I am simply suggesting that it does not seem so to me and that all of those terms and all of those limitations ought to be grouped so that they can be easily seen instead of running through several provisions of the statute.

Mr. LENROOT. You say in your bill you set out all of these things?

Mr. MONDELL. We tried in section 6 of the bill to insert directly every condition and limitation of the lease and every covenant of the lease. I will not say it is perfectly framed; I do not claim anything of the sort. I say we attempted to do it, with the view of having them grouped.

Mr. LENROOT. I noted in the latter part of your bill where you seem to have practically the same provisions with reference to regulations (reading):

> But licenses and leases provided for in this act may be issued without regard to the fact that the lands may be covered by mining locations, and the Secretary of the Interior shall provide by appropriate regulation for the observance by licensees, lessees, and locators of the respective rights of each.

Mr. MONDELL. Certainly; that is a very clear definition of the field in which he may issue regulations. He may issue regulations in reference to the right of the mineral locator and the right of the coal locator.

Mr. LENROOT. That would not be a part of the provisions of the lease necessarily, as you suggested it ought to be.

Mr. MONDELL. That is not among the covenants, that is true; for one reason, because it is not the sort of thing on which you would be likely to cancel a lease, and it would probably apply to very many cases. I am speaking of those important things for a failure to comply with which the lease should be subject to cancellation. Those classes of regulations or rules or requirements the violation of which authorizes the Secretary or, as the other bill says, and I think this should, any party in interest to begin proceedings.

Mr. LENROOT. I would like to have you go back to section 11 for just a moment, in order to get it into the record. Assuming that the construction of the framers of this bill were correct as to the right to grant the use of easements, etc., to other lessees. That is a right reserved to the Government to grant such use, but under the bill as it stands the Secretary of the Interior would not have any right to grant any easements outside of the leased tract. The Government might have, but the Secretary would not unless specific authority is given. Is not that so?

Mr. MONDELL (reading). "That any lease, entry, location, occupation, or use permitted under this act shall reserve to the Government of the United States the right to grant or use such easements in, over," etc., permitted under this act shall reserve to the Government of the United States; that is, to the Secretary——

Mr. LENROOT. No; to the Government of the United States, not to the Secretary. In other words, for the Secretary to grant an easement to another lessee he has not to find his authority to do it in the bill; but is there any such authority even under the construction of the terms of the bill?

Mr. MONDELL. I am inclined to think that your criticism is probably well founded in that the reservation of the right to the Federal Government does not perhaps necessarily carry with it authority to grant under it. The provision contained in the other bill to which I have called your attention (sec. 10) specifically provides for the granting by the Secretary of the Interior. It is not a reservation of the right, but it is a specific provision for the granting. There can be no question about the provision in the other bill authorizing that to be done. That authority ought to be very clear and very broad, because it is an authority that everyone realizes it would be necessary to exercise quite frequently in connection with the leasing and operation of coal lands.

You use here the words "court of competent jurisdiction" at one point instead of designating an Alaskan court. I do not just know what the effect of that would be, but it does seem to me——

Mr. WICKERSHAM. What was that? I did not quite hear you.

Mr. MONDELL. "Court of competent jurisdiction" at one place.

Mr. RAKER. Line 16, section 13, page 7.

Mr. MONDELL. I do not pretend to know just what courts that would include, but I would suggest that lessees ought not to be required to travel very far to reach a court when required to defend themselves; and the other bill provides specifically for the trial of these cases in one particular court in Alaska, having in mind, of course, only the Bering River and Matanuska fields. My own suggestion would be, without pretending to be an authority on that sort of thing, the provision ought to be that the trial of cases should be

initiated in the district court of the Territory of Alaska in which the property is located. I leave that suggestion with you.

Briefly, I want to call the attention of the committee to what we were discussing a moment ago, and that is the conditions and covenants of the lease, which we attempted to set out in one section. I rather like it because it does attempt to group all of the conditions in one section. It contains some provisions that, it seems to me, are essential to a bill of this character, that the bill before us does not contain. Attempt seems to be made to prevent monopoly under the bill before us, first, by reserving some coal land. I doubt whether that would have much effect. Second, by putting people in jail who attempt to combine their interests, but it contains no provisions under which a lease could be canceled, even though all parties in interest might be in the penitentiary, so far as I have seen. It is exceedingly important, it seems to me, that one of the covenants and conditions of the lease should relate to fair trade and fair prices, and absence of monopoly in the operation.

Mr. LENROOT. Right there, Mr. Mondell, the bill does provide for a forfeiture of a lease for any violation.

Mr. RAKER. I understand the urgency deficiency bill is now before the House. I am perfectly willing to stop. Judge Graham suggests it would be almost impossible to get a quorum this afternoon, and without objection we will adjourn the hearing until to-morrow morning at 10 o'clock.

(Whereupon, at 12.15 o'clock p. m., the committee adjourned to meet to-morrow, Wednesday, February 25, 1914, at 10 o'clock a. m.)

COMMITTEE ON PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Wednesday, February 25, 1914.

The committee was called to order at 10.30 a m., Hon. Scott Ferris (chairman) presiding.

The CHAIRMAN. Gentlemen of the committee, Mr. Mondell will have recognition until 11 o'clock, and after that we will hear some of the Alaska witnesses who are here in the interest of these bills.

STATEMENT OF HON. FRANK W. MONDELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING—Continued.

Mr. MONDELL. Mr. Chairman, when I concluded my statement last evening I had hurriedly gone over the bill section by section, not as carefully or in as much detail as I would have liked to, but pointing out possible defects, suggesting changes, and so forth. I wish to return now just for a moment to the plan of leasing in section 3.

Mr. RAKER. Of what bill?

Mr. MONDELL. Of the bill before the committee. I said the other day that the plan of calling for bids, which was altogether different from the plan contained in the bill which the committee reported the other day, owing to the peculiar circumstances surrounding the Matanuska and Bering River fields, did not appeal to me, because there might be a good deal of conflict and difficulty in reference to it, and that it might be embarrassing on the part of the Secretary in determining between applicants. I said also that my opinion was that as a fixed policy in Alaska it would not be workable and that as a policy to be adopted generally throughout the country I did not think it would be wise.

Now, since then, this thought has occurred to me that I did not elaborate upon at that time. You have a minimum of 1 cent per ton and I do not see anything in the bill which would relieve the Secretary of the Interior from the necessity of granting a lease for 2,560 acres on a bid of a cent a ton.

The CHAIRMAN. Two cents, is it not?

Mr. MONDELL. Yes; 2 cents a ton. I do not think the committee wants to have that occur, and the query is, How are you going to remedy it? You ought to have a low minimum, and particularly when you come to include the lignite fields, but you certainly do not want to put the Secretary of the Interior in a position where he would be compelled to grant leases in these two great fields at 2 cents a ton for 20 years or more if you change the bill. Now, the other bill fixed the royalties at from 3 to 6 cents a ton for a period of 10 years, 5 to 8 cents a ton for 10 years, 5 to 10 cents a ton for the remaining 15 years of the 30-year period. There was a great

deal of criticism of that provision when we had the bill on the floor. There were some gentlemen who were very much disappointed because they could not get 50 cents a ton on coal in royalty in Alaska, which was ridiculous. It appealed to a lot of men and it got a lot of votes, ridiculous as it was. You could not get very far with an Alaskan leasing bill if it was stated that instead of a bill that would compel at least 3, 5, or 8 cents as the minimum for the term of the lease you had one under which you might only get 1 cent a ton. I do not know just how you meet that under the bidding proposition.

I realize that in the development of the country, with mines established, with entries driven, with the desire to secure lands beyond the entries and reach beyond the entries, or accessible from operations already under way, it is perfectly safe to advertise for bids with a pretty low minimum, assuming that in that case there would be some competition. But I have not personally any idea that in any of these bids that might be brought out by this bill you would receive an offer as high as the minimum royalties which were contained in the bill which was offered 10 years ago, and you might have no higher offer than a cent a ton, and the Secretary, under this bill as it now stands, would be required to make the contract.

Mr. LENROOT. You mean 2 cents a ton?

Mr. MONDELL. Yes. You might authorize the Secretary to reject any and all bids, because they would not help the case any, and because the country would like to know the desire and expectation of Congress in the matter of these royalties. It is not expressed in your minimum, because the minimum is simply the very lowest figure that you contemplate might have to be obtained for the mining of the poorest and cheapest coal. It is not a royalty that you contemplate would be fixed in the Bering or Matanuska fields.

Mr. FRENCH. Let me interrupt you just a moment. These hearings will be read when we are through; but where is the language in the bill that you construe to mean that the Secretary in any sense would be forced to take the minimum of 2 cents a ton? I thought from your statement a few moments ago that it implied that you wanted to know if there was any language there that suggested it.

Mr. MONDELL. I do not think there is any language that strictly states that, but the lack of any language which gives him any discretion would compel him. In other words, if you say the minimum shall be 2 cents a ton and do not leave the Secretary any discretion, it compels him to take that minimum, of course.

The CHAIRMAN. Does not that very language itself give him the broadest sort of discretion, and does not the very fact there is no maximum placed at all allow him to go as far as he desires in the matter?

Mr. MONDELL. If you had a bill which proposed to let the Secretary of the Interior fix the royalty, that would be all right; but your bill does not do anything of the sort. Your bill proposes to lease coal lands on competitive bids.

The CHAIRMAN. That is only for the bonus. I know the gentleman wishes to help us, and I know we do not want to put into the hearing anything that will burden the record, but allow me to give the gentleman a practical idea of the working of this very proposition. A practical working scheme is as good a thing to be called to the atten-

tion of the committee as anything we could present to them. Down in our State, not only on coal lands but on oil lands, and not only on oil lands and coal lands and mineral lands but on agricultural lands the administrative officer fixes the royalty or rental, whichever you call it—it is the same thing described in different terms—at the best possible figure he can with the facts before him, and at the most equitable figure—as much as he can get—and then on top of that, in order to determine the priority of bids, he advertises that he will on a certain day lease the following tract of coal land, oil land, or agricultural land, as the case may be, at the following-described rental value or royalty value, and that the highest bonus bidder for the tract, at the fixed rental, shall determine the priority of the bids, and it is used for the purpose of determining priority.

Mr. MONDELL. All I have to say about that, Mr. Chairman, is that that sort of a procedure would probably relieve the situation, but if that is your thought then you must modify your bill, because there is certainly nothing in the bill, as I read it—and I am simply giving you my impression of it because the impression that one receives in reading it would be the impression that people would get generally—I say, as I read the bill I do not find anything in it that would authorize the Secretary himself to put an upset or minimum upon each and every or upon all of the tracts. If that is the thought, why you need to write it in your bill. Of course that can be done, but I am very glad that I did not mention it, because it is clear that my understanding and your understanding of the purpose of the bill was not the same and that if I am right your bill needs amending.

The CHAIRMAN. What amendment would you suggest?

Mr. MONDELL. Really, Mr. Chairman, I could not suggest offhand, because I have not thought of that particular matter. I will be very glad if I can assist the committee by presenting to it any idea that occurs to me, but I have no doubt but what the members of the committee could draft something that would cover that quite as well as I could.

Mr. LENROOT. If you will turn to section 9, lines 13 and 14, an amendment could be made something like this: Such royalties as may be fixed by the Secretary of the Interior to be specified in the lease. Would that not clear it up?

Mr. MONDELL. I would say that something of that kind, without giving it further thought, would probably cover the matter.

The CHAIRMAN. That is in the bill already.

Mr. LENROOT. No; the bill does not say: "Not to be fixed by the Secretary of the Interior."

The CHAIRMAN. It says: "Such royalties as may be specified in the lease," and the other portion of the bill authorizes the Secretary to lease under such terms and under such rules and regulations as he may prescribe, which will uathorize him to put almost anything in the lease.

Mr. LENROOT. Mr. Mondell's consideration of section three implies that this advertisement goes to the amount of the lease—that is, the royalty to be paid—and if that is true, of course then the Secretary would have no discretion.

The CHAIRMAN. No one desires that to occur.

Mr. LENROOT. I understand that; it is a question of whether the bill covers it.

The CHAIRMAN. Yes.

Mr. MONDELL. I desire now to give a little attention to some of the omissions in the bill as I see them. The strongest argument that can be made in favor of leasing legislation is that it enables the Government to regain control over the situation and through that control to prevent combinations and monopoly. Leasing that does not accomplish that has failed in what is really the primary purpose of leasing legislation. The securing of revenue is comparatively secondary, but, curiously, this bill contains no provisions at all, so far as I can find, that either prohibits or would punish combinations in restraint of trade, attempts at monopoly, unfair discrimination between persons and places and all that sort of thing—the prohibition and prevention of which is really the primary object of leasing legislation. So it seems to me that is the very worst fault of the bill. If those of you who have it before you will turn to the other bill that the committee reported, to which I have been referring, you will find that among the covenants of the lease is this: That he, the lessee, will at all times sell the coal extracted from the leased premises at just, fair, and reasonable rates.

The CHAIRMAN. What bill are you reading from?

Mr. MONDELL. From section 6 of House bill 11616, which is the bill I introduced and which is the bill as it was reported unanimously by this committee three years ago and presented to the House with the change of three words only. It contains this provision: That he (the lessee) shall not monopolize, in whole or in part, the trade in coal. That he will at all times sell the coal extracted from the leased premises at just, fair, and reasonable rates, without the giving of rebates or drawbacks, and without discrimination in price or otherwise, as between persons or places for a like product delivered under similar terms and conditions. That is the covenant of the lease and the lease can be canceled by proceedings instituted for that purpose and for violation of these conditions.

I would just like to read section 6 of that bill in which we intend to include the important conditions and covenants of the lease. We tried to get them all in one section. The gentleman from Wisconsin called attention to the fact that there was no provision in the lease that was not in that section. However, it is not a tremendously important one. It says:

SEC. 6. That all leases issued under the provisions of this act shall be upon the condition that the lessee shall proceed with due diligence to open a coal mine or mines on the leased premises and to produce coal therefrom during the life of the lease in such quantity as the condition of the market shall justify.

That, I think, is a provision that should be inserted in any lease. It is pretty hard to establish any hard and fast rule with regard to continued operation. You can compel continued operation if you have the rental feature, and I suggested an increase yesterday in the rental price, but the question of just how much of an output there should be to comply with the conditions of the lease in good faith is a question of market. Then it goes on:

That the lessee shall not during the lifetime of the lease receive or hold, directly or indirectly, any other lease under the provisions of this act or interest therein. That he shall not monopolize, in whole or in part, the trade in coal. That he will at all times sell the coal extracted from the leased premises at

just, fair, and reasonable rates, without the giving of rebates or drawbacks, and without discrimination in price or otherwise, as between persons or places for a like product delivered under similar terms and conditions. That the mining operations shall be carried on in a workmanlike manner, with due regard to the permanence of the mine, without undue waste, and with especial reference to the safety and welfare of the miners. That the leased premises and all mines opened thereon and all maps and records of coal production shall at all times be subject to inspection and examination by such officers as may be provided by law or designated by the Secretary of the Interior for such purpose. That the lessee shall observe, abide by, and conform to all of the provisions and limitations of this act, and that he shall pay promptly all rents and royalties when due, and the Secretary of the Interior or any person in interest may institute in the United States District Court for division No. 1, Territory of Alaska, appropriate proceedings for the enforcement of the terms of the lease or for its cancellation for violation of the terms thereof or of the provisions of this act.

Appeals from the decisions of the said court shall lie to the United States Circuit Court of Appeals for the Ninth Circuit. Said leases shall also be upon the condition that the United States shall, at all times, have a preference right to take, wherever found, so much of the product of any mine or mines opened upon the leased land as may be necessary for the use of the Army or Navy or Revenue-Cutter Service, and pay such reasonable and remunerative price therefor as may be fixed by the President, but the owner of any coal so taken who may be dissatisfied with the price thus fixed shall have the right to prosecute suits against the United States in the United States District Court for division No. 1, Territory of Alaska, for the recovery of any additional sum or sums claimed to be justly due upon the coal so taken.

Mr. LENROOT. I would like to ask you a question or two. The first clause is the one I have in mind. Do you think that would interfere with the making of leases? In other words, with that provision of the lease, would not capital be slower in going in there—that part of the lease, I mean, as to furnishing the quantity and the condition of the market?

Mr. MONDELL. I think, of course, in any lease you must have some provisions to compel operations. It is only a question of what provisions will produce the desired results. You have no desire to work a hardship on the coal operator. You do not want to have mines withheld from use, and the question is, then, what should your provision be? What should be the criterion?

Mr. LENROOT. That is what I had in mind. Here is a man with a capital of a hundred thousand dollars, with which he can open up a mine and purchase coal of a moderate quantity. That is all the capital he may have, and he might be able to mine the coal with that amount, and the question is would the man with a hundred thousand dollars go in and secure a lease if he would be compelled, under the terms of the lease, to invest a million dollars?

Mr. MONDELL. I do not think that would follow, though, of course, I concede the force of the thought you have in mind. Your rental price should be high enough to compel the operation to be commensurate with the size of the lease. That is the theory of the rental, that the man shall not rent 2,500 acres and start a 160-acre operation on it, and on way, and a pretty effective way, to prevent him doing that is to pile up a land rent on him.

Now, what we had in mind was, what the conditions of the market would justify in view of the kind of operation which the man has. If there is a man who could not produce more than a hundred tons a day no one could prosecute a suit against him on the ground that he could not get a thousand tons.

Mr. LENROOT. What I wanted to know was whether this language is sufficient to cover it in that way.

Mr. MONDELL. I would not say it is the happiest language in the world, because that particular thought had not occurred to me, because I had in mind the controlling idea that you must, in all lease legislation, compel an operation commensurate with the area of the lease. If you give a man the opportunity to hold in reserve a great many million tons of coal you must do it with the understanding that his operation is to be an operation that, within the reasonable lifetime of the enterprise, would work out that area. You do not want a hundred-ton operation tie up an area having a capacity of a 1,500-ton operation.

Mr. BROWN. May I ask you a question? On line 22, section 6 of your bill, it says: "And without discrimination in price or otherwise." That means, among other things, I judge, the amount of the delivery to any particular purchaser. If that wording is left as it is it would prevent anyone from making a contract with any purchaser to deliver him so much coal. If some one else wanted coal and could not get it in that neighborhood, then that person who wanted coal would refer to this act and could make the purchaser cancel his contract with the other party.

Mr. MONDELL. That could not affect a contract as long as the contract was a fair contract at the time it was made.

Mr. BROWN. In the face of this act?

Mr. MONDELL. No; I think not. If at the beginning of the year I made so much at that time and entirely from a contract with the only man who wanted to buy coal from me and I said I would furnish him a thousand tons of coal a day or a hundred tons of coal a day, delivered at a certain place for a certain price, the fact that later some one came along and concluded they wanted some coal under this provision that would not compel the breaking of that contract, but it would compel the furnishing of the coal at the same point of delivery and of the same kind for the same price if the operator had it.

Mr. BROWN. If he had it?

Mr. MONDELL. Of course you could not compel him to have it, and it would not interfere with a perfectly legitimate contract. The bill says no discrimination in price or otherwise; no discrimination in price or in quality or in conditions of delivery as between persons and places for like product delivered on similar terms and conditions. A man can not make a lower price for a thousand tons a day than he could make with the man who backed the tail of his cart under his tipple, and it would be very proper that he should be able to do that.

Mr. LENROOT. If he had the coal there, it would not compel him to enlarge his operations?

Mr. MONDELL. It would not compel a man at a loss.

Mr. LENROOT. Oh, no.

Mr. MONDELL. But if without a yield it would compel him to supply all comers. Of course you could not compel a man under any circumstances to get out the stuff at an actual loss to him. But he must at all times sell the coal extracted from the leased premises at just, fair, and reasonable rates without the giving of rebates or drawbacks and without discrimination in price or otherwise as between

persons and places for a like product delivered under similar terms and conditions, and then the bill provides for the conditions under which the Secretary—and I think that is important, and, from a rather hurried reading of the bill before the committee, it is not clear—shall proceed in cases of litigation. You have a provision allowing other parties to intervene in suits, but I think it is clear that any party who can show an interest of any sort ought to be allowed to sue on the bond of the lessee or to begin action.

Mr. LENROOT. What kind of interests have you in mind?

Mr. MONDELL. Well, a coal purchaser would be a party in interest; a person desiring to buy coal and being charged an exorbitant price for it.

Mr. LENROOT. Do you think he would be a party in interest in the lease?

Mr. MONDELL. That was my notion at the time we drafted that provision. I think that any party who might be aggrieved or injured or affected—and possibly better language than that used could be used—but I think it is tremendously important, because, after all, these leases and these lessees must be kept in compliance with the law; and these leases must be enforced, not so much by operation of the Department of Justice 3,000 miles away as by the active interest and action of those in the locality who are directly affected. Therefore, if the Department of Justice was slow in taking up a complaint, or if the complaint was of such a character that the Department of Justice did not feel the Government should take it up, there ought to be some provision under which anyone adversely affected could take it up. Possibly we did not make that clear. Then follows that provision giving the United States the preference right "to take wherever found, so much of the product of any mine or mines opened upon the leased land as may be necessary for the use of the Army or Navy or Revenue-Cutter Service," and so forth.

Now, those provisions against competition, against unfair discrimination, and those provisions with regard to giving the Federal Government the use of the coal wherever found, in my opinion, entirely obviate the necessity of any reservation of these coal lands and would be very much more effective in preventing combinations and monopoly and unfair practices than even those provisions which set forth that the entering into an agreement to combine interests is a felony.

Mr. JOHNSON. Would not that right be confined to a lessee?

Mr. MONDELL. Well, that was not our thought. That is a question for consideration. There has been a great deal of discussion as to that.

Mr. JOHNSON. If I were engaged in business and purchased 400 tons or 1,000 tons of coal for my own use, should the Government have permission to take that coal?

Mr. MONDELL. In case of war the Government has the right to take anything.

Mr. JOHNSON. I know that is true in the case of war.

Mr. MONDELL. And that would be about the only condition under which it would be taken. Let me make this suggestion: I know of no better way to occasionally get a fair and equitable and what is the reasonable price of coal in a given locality than to have the Gov-

ernment exercise its authority under that provision. The President is not going to confiscate that property. He is going to pay for it if he takes it at a reasonable price, and it is a fairly good way to occasionally settle the question as to what constitutes a fair and reasonable price in a given locality. If the Government came in and established that fact by purchasing it would not absolutely settle it as between the operator and the purchasers, but it would at least be pretty conclusive evidence as to the approximate value of the coal at that time.

I want to call your attention further to the fact that there is no provision in your bill in regard to the terms and conditions under which the lessee may abandon or surrender his lease, or as to what he shall do with the property in case he is relieved of it, or what he must do with the property at the expiration of his lease in order to prevent damage—what he may dispose of and what he may not dispose of—and those are important provisions.

I think there are one or two other provisions in this bill that I have not had time to refer to in the other bill—the bill that the committee reported three years ago—that ought to be contained in any legislation which is reported.

Mr. LENROOT. You mean his rights to the improvements he puts on the property?

Mr. MONDELL. The bill contains provisions as to what the lessee must do in case he desires to surrender his lease, what he may dispose of, and the conditions in which he must leave the mine. It also contains provisions with regard to the surrender of possession at the end of the lease. The other bill provides for a general bond to cover that and other matters.

The CHAIRMAN. Let me suggest that section 12 authorizes the Secretary to incorporate in the lease any conditions he sees fit in addition to several specific ones enumerated. Before you finish, Mr. Mondell, I want to thank you on behalf of the committee for coming here. I think I would be voicing the will of the committee if I asked you to prepare such amendments as you think should go into this bill and send them here. You have given this coal question a great deal of attention, and have been chairman of the committee, and if an amendment would come from any source that would make this bill better and stronger, I am sure the committee, as well as the Secretary, who has been doubly generous in helping to mold this bill, would appreciate it.

Mr. MONDELL. I have been entirely free in offering suggestions, not in the way of criticism, because I think all of us are old enough in legislative life to know that none of us can construct a bill—at least, I can not—that you could not punch a lot of holes in when some other fellow got a different view or angle on it from the view which the draftsman had at the time he drafted the bill. Our varied experience assists and aids us in all this.

Mr. KENT. Before Mr. Mondell takes leave I would like to bring up one question suggested by Mr. Raker yesterday, and that is the proposition of reserving rights on a given lease for the benefit of another lease. I can not put it in general terms, so I will be specific. Up in British Columbia I have a mine and in trying to develop my mine I found it was absolutely necessary to obtain ground on another

claim for a bunk house, and I found it was necessary to use the tunnels of the other people to develop my mine in an entirely separate matter. That was an economic necessity and I was put to a great deal of unnecessary expense in that connection. It seems to me in this bill we should provide for such power on the part of the Secretary to regulate as will permit one mine to utilize ground that is not a hardship on the other mine and possibly for cooperative use of proper tunnels and works that may be necessary to the mine farther away.

Mr. MONDELL. As I said yesterday, in answer to Judge Raker's question on that point, I think the paragraph in the other bill is clearer.

The CHAIRMAN. Section 12 gives authority——

Mr. MONDELL (interposing). And covers more ground, and the gentleman from Wisconsin called attention to the fact that the provision in this bill, if it remains as it is, must at least be amended so as to give the Secretary authority to do those things. It simply reserves the right to do them and, unlike the other bill, it gives the Secretary the direct authority to do them, and this bill does not contain any provision under which the local authorities could build roads and highways, and that certainly should be provided for, unless it may be covered, and I am not so sure about that, under the general authority of the local people. I doubt it, however. But the provision with regard to joint use and rights of way and easements in the other bill is a great deal broader than in the bill now before you.

Mr. RAKER. I would like to ask Mr. Mondell one question. With reference to the present bill, do you think there is anything in the bill before the committee that would prevent these lessees from combining and forming an independent corporation for selling purposes, making exclusive contracts for the products of their mines with that corporation and thereby securing as complete a monopoly as if they had combined upon the leases?

Mr. MONDELL. I have not seen anything in the bill to prevent that. I have not had time to read this bill as carefully as I should have read it, but I find nothing in the bill that would prevent that being done, and that is the reason I emphasized the fact that some provision of that kind should be in the bill, because that is the real primary object of a leasing bill. If there was no danger of monopoly or control or unfair dealing and discrimination, I do not think we ought to spend our time about leasing legislation. We are in favor of that, even those of us who have been a long time coming to that point of view, because we are rather convinced it is the effective way, providing you put it in your lease to prevent people from establishing monopolies or dealing unfairly.

The CHAIRMAN. It seems to me that sections 7 and 8 contain the interlocking features, and they also cover the selling and transferring of the leases.

Mr. MONDELL. I do not think they cover the question of control, but simply the question of interest.

The CHAIRMAN. We could not say who the coal should be sold to.

Mr. MONDELL. I think we have an excellent provision on that point in the other bill which is all embracing, and I want to remind the chairman of the fact that he is largely responsible for its being in the bill in the form in which it is.

The CHAIRMAN. I do not have in mind the general make-up of the bill, but I remember we had long hearings on that bill, and, to be frank, I thought it was the best bill we could get, and I do not now cry out against the bill other than to say that of course the gentleman knows both he and myself were rather run over unceremoniously on that bill, and I think largely on misapprehension.

Mr. MONDELL. We ought to adopt the good features in either of the bills. This is so tremendously important, and, as a matter of fact, that is the fundamental question—to prevent that sort of thing, and that is why we propose this leasing system.

The CHAIRMAN. There is one thing we want to keep in mind all through this legislation, and we ought to be careful not to go astray on it. It is the wish of the people of Alaska and of the people of the United States, the wish of the administrative branch, and the wish of Congress itself, that what we do is to provide a workable proposition up there, and while none of us want to make any mistakes, at the same time there should not be provisions lugged in the bill that will leave Alaska tied up more than it is now. I was not in favor of the railroad bill, although most of you gentlemen did favor it and it was passed by Congress, but if we should pass legislation that would make this a nullity, then we would have a hard day's labor in the field of experience without accomplishing anything for Alaska. I am not making any specific answer to any specific question; I am only speaking on the general proposition.

Mr. LENROOT. I would like to ask whether or not Mr. Mondell's objection, which I think is well taken, could not be taken care of by extending the prohibition in other leases after the provision in reference to parties holding any interest in a corporation that purchased the property?

The CHAIRMAN. That might be done. Of course, sections 7 and 8 were the two sections that were given attention with reference to that interlocking and monopolistic feature.

Mr. LENROOT. But it is limited to leases.

The CHAIRMAN. That is true. It was not thought that it would be possible to say effectively to whom the coal should be sold, and you get into a difficult realm when you get into that. You lease a man a piece of coal land, and you prescribe how he shall operate and mine it, how he shall handle his labor. You can prescribe how to remove the coal and prevent waste, how he shall completely work the mine out before he abandons it, and those provisions are all provided for, and you can provide that he must not engage in other leasing or in interlocking between himself and the lessee; but it is doubtful to my mind whether you can say to whom, in the last analysis, he shall sell his product.

Mr. MONDELL. It would be no more difficult to say that the lessee shall not have any interest in a corporation to which he sells his product than to say he shall have no other interest in any other lease.

The CHAIRMAN. Might you not be in the attitude of saying he shall not use his own coal?

Mr. MONDELL. I do not think so.

The CHAIRMAN. Well, we can go into that when the time comes.

STATEMENT OF MR. JOHN E. BALLAINE, OF SEWARD, ALASKA, AND SEATTLE, WASH.

Mr. BALLAINE. Mr. Chairman and gentlemen of the committee, I am heartily in favor of the principle and the purposes of this coal-leasing bill, but it seems to me there are two provisions where amendments should be made to strengthen it.

The practical working of this bill will be that among the first corporations to take leases will be the large smelting companies on the Pacific coast—the Guggenheims, the United States Mining & Smelting Co., and possibly the Granby people—to get coke for their own smelters. The next will be leases for the domestic supply. In some cases the Alaska municipalities themselves will be the lessees. An amendment for their benefit is one which I wish particularly to mention.

On page 3, section 3, lines 7, 8, and 9, the bill provides: "Or to any association of such persons, or to any corporation organized under the laws of the United States or of any State or Territory thereof." It may be that an Alaska municipality under this wording could lease a tract of coal land for its own municipal purposes or to supply the people of the municipality; but I believe that, in order to remove any doubt and make it specific, there should be inserted "or any municipality in Alaska."

Mr. RAKER. Where?

Mr. BALLAINE. In lines 7, 8, or 9, wherever it might be proper. I will explain briefly why that should be done.

Mr. FERGUSSON. You say any municipality in Alaska?

Mr. BALLAINE. Yes, sir; or any municipality outside of Alaska also, if you care to have it so. The towns on the southern coast of Alaska have been paying, until recently, about $16 a ton for coal brought up from British Columbia and from Washington. The supply and price were controlled by an absolute monopoly. We found it necessary there in a few cases, notably at Juneau and Valdez and Seward, for the municipalities themselves to go into the coal business in order to break the monopoly and reduce prices. The immediate result was a reduction in the price of coal to the consumers from $16 to $12 a ton, and, in a few cases, to $10 a ton. That was the most effective means of breaking a monopoly that I have known.

Mr. RAKER. Is it your idea that we should give this right to any municipality or only to any municipality in the Territory of Alaska?

Mr. BALLAINE. I had the Alaska municipalities particularly in mind, but the privilege should be open to any municipality—Seattle, Portland, or San Francisco—as well as the Alaska towns. I do not see why it should be denied to any. The privilege of taking out leases should be made general.

Mr. RAKER. You think it would be better to have them granted generally?

Mr. BALLAINE. Yes, sir.

Mr. RAKER. If the city of Seattle wanted to get 2,560 acres to work, we should let them have the privilege?

Mr. BALLAINE. I think so, and I think it might come about that the large cities on the Pacific coast will be among the lessees.

In the Lusitna, the Tanana, and the Kuskokwim Valleys, and in many other parts of Alaska the country is underlain with deposits

of lignite coal. The town of Iditarod, for example, stands over or near a layer of lignite suitable for all domestic uses. Many of the new towns to be on the Government railroads will be near coal fields. They can take leases for their own uses. It takes a good deal of capital to open a coal mine, and not every individual in Alaska has the money available for that purpose. The municipality can always provide the necessary funds. Fairbanks, I believe, may put in its own municipal plant to supply light and electric power for the city and for the surrounding country, probably soon after the Government railroad opens the Nenana coal field.

Mr. FERGUSSON. Are you clear in your surmise that the present bill would exclude municipal corporations?

Mr. BALLAINE. I am not. I stated that I did not know whether it would, but I think it would make the bill stronger to have it provide explicitly that a municipality may do so, in order to remove all doubt. I have no doubt in the world that such a provision would protect the municipalities and their people against monopoly.

The CHAIRMAN. You for a moment dwelt on the fact that you think the same reasons should apply to the cities of the United States. I think, perhaps, the committee would agree with you as to the Alaska cities. Do you think that for the same reasons it should apply to the cities of the United States?

Mr. BALLAINE. I will tell you the situation we are in on the Pacific coast. Seattle, San Francisco, Portland, and all other cities there are paying famine prices for coal. I pay $9.50 a ton for coal put in my house in Seattle. Senator Chamberlain told the Senate Committee on Territories that he was paying $11 a ton for coal he burned in his residence in Portland. Much of that coal is brought from Wyoming and Utah. The market price in San Francisco is from $11 to $25 a ton. The Bureau of Statistics states that more than 300,000 tons of coal was imported at San Francisco during the fiscal year ending last July. That being the case, it might be desirable for those cities to lease some of the Alaska coal for their own use, and for the general supply of their citizens.

The CHAIRMAN. Do you think of any harm that would result from that?

Mr. BALLAINE. Absolutely none at all. I am not afraid of any municipality's taking hold of a thing of that sort if it is for the general god.

Mr. KENT. If the bill provided that any public or private corporation should be permitted to lease, that would settle the whole proposition.

Mr. BALLAINE. I did not quite undersand your remark.

Mr. KENT. I said that if the bill simply provided that any public or private corporation should be permitted to lease, it would settle the whole question.

The CHAIRMAN. It does go on and say any corporation organized under the laws of the United States.

Mr. BALLENTINE. I think that would leave it rather doubtful.

Mr. RAKER. You could put in "any municipality or corporation organized under the laws of the United States or of any State or Territory.

The CHAIRMAN. I can not see any harm in it.

Mr. BALLAINE. I think it would strengthen the bill very much.

Mr. FERGUSSON. Do you think it would result in promoting developement?

Mr. BALLAINE. I think that in many cases the Alaska municipalities themselves will lease and develop coal tracts to supply their own people, as well as to operate their own municipal lighting plants. They could supply their own people at a small percentage above cost. It may indeed be necessary for them to do that very thing.

Again, on page 5, lines 23, 24, and 25, in section 9, the bill provides that the leases shall be for indeterminate periods upon the condition of continued operation of the mine or mines. I think the purpose of that provision is good.

But let me call the committee's attention to this condition in one part of Alaska: On the Seward Peninsula, which jets out into the Bering Sea, consumers are dependent for their coal supply altogether on coal shipped in from the outside, and coal retails in that country, at Nome and other places on the Seward Peninsula, at from $20 to $25 a ton normally. Occasionally there have been temporary wars that have resulted in a brief reduction in the price, but the prevailing price is from $20 to $25 a ton. About a hundred miles north of Nome, on Cape Lisburne, is a large field. The Lisburne coal is not as good as the Matanuska or the Bering River coal, but it is a fairly good subbituminous coal. If the municipalities are permitted to lease coal, I believe that the city of Nome, and probably other towns on the Seward Peninsula, might ultimately apply for leases of some of that coal at Cape Lisburne. But the Lisburne field is on the Arctic Ocean, and the water to it is open for navigation only about four or five months during the summer. A coal mine there could not, therefore, be operated continuously to advantage. I simply call the committee's attention to that fact.

The CHAIRMAN. That suggestion is a very proper one, but would you not say the exception that immediately follows the language you just referred to on page 5, excepting strikes, elements, and casualties not attributable to the lessee, should apply there? Would not the closed waters be considered the elements?

Mr. BALLAINE. Possibly, but not certainly.

The CHAIRMAN. If not, your suggestion would be a very forcible one. Undoubtedly closed ports on account of ice would be elements.

Mr. KENT. That would be very uncertain. I do not suppose you can call an actual freeze up an act of God.

The CHAIRMAN. I would call that an act of the elements. The bill says "elements, or casualties not attributable to the lessee." Certainly the action of the elements is a casualty. It is not anything attributable to the lessee.

Mr. KENT. It is a certainty that is going to happen. Something ought to be put in there to change that language.

Mr. FERGUSSON. Would this meet your idea—to insert the words "climatic conditions"?

Mr. BALLAINE. I think that might cover it, although I am not a lawyer. I should prefer to leave the exact wording to the committee.

Mr. GRAHAM. I think it should be worded in such a way as to avoid making any loopholes.

The CHAIRMAN. You would scarcely want to make the provisions so broad that selfish corporations could come in there and tie this development up and not go on with the work? The committee should understand that that is a very delicate line we are walking on. If selfish people could tie up under a lease and then not operate and hold the Territory up indefinitely, they could greatly retard your own development.

Mr. FERGUSSON. Could not the whole question be taken care of in the discretion of the Secretary of the Interior?

The CHAIRMAN. He is bound by what the law says.

Mr. FERGUSON. As I suggested before, would it not be better to make the wording simply "climatic conditions"?

Mr. RAKER. Everyone knows that during certain months there is a freeze up. Suppose you inserted the word "natural," in line 1, page 6, before the word "elements," making it read "natural elements." Would that apply?

Mr. BALLAINE. That, of course, would be for the committee to determine.

Mr. RAKER. What I am getting at is this: "Natural elements, of course, exist in every locality, according to the length of season, both as to ice and as to freezing, and during that season the mines could not be operated.

Mr. BALLAINE. I should think your suggestion a good one and that the language might fit the case.

Mr. RAKER. What is your view on that, Brother Finney? Would the words "natural elements" cover it?

Mr. FINNEY. I think it would, Judge.

Mr. GRAHAM. It may cover more.

The CHAIRMAN. You had better be a little careful and not open it up too wide.

Mr. BALLAINE. That is the only part of Alaska where that condition applies, and whatever language is used in the bill, of course, should be with that view—to the operation of the Cape Lisburne field.

Mr. LENROOT. I should like to have in these hearings somewhere, Mr. Chairman, some data as to leasing by States and information as to the operation. It is in line with Mr. Ballaine's suggestion as to leasing by municipalities. I think the Bureau of Mines has the data with reference to what has been done in the States in leasing their own coal lands.

The CHAIRMAN. Dr. Holmes is at the head of the Bureau of Mines and has been invited to appear before the committee, but he is at present detained at the other end of the Capitol.

Mr. LENROOT. I would suggest that if this data is put into the record he would not have to take the time to appear here.

The CHAIRMAN. I think we ought to hear from Dr. Holmes. He is now before a Senate committee, but he desires to help us in this matter, and he has arranged with the Secretary to appear here, and we can get him here almost any time.

Mr. LENROOT. I think, however, we ought to have that information in the record.

STATEMENT OF MR. R. S. RYAN.

The CHAIRMAN. Whom do you represent?

Mr. RYAN. Mr. Chairman and gentlemen of the committee, I am president of the Controller Railway & Navigation Co., a corporation which proposes to build a line of road from Controller Bay into the Bering coal field. I have spent 16 years in Alaska, the early part of which was mostly in the Seward Peninsula; the Nome district. I have some knowledge of the Lisburne field. We burned some of the coal in 1900, in Nome, and thought it a very poor coal. Bills of this kind have been discussed may times. I presume the intention of the committee is to try and frame a bill that will be a practical one and one that the Alaskan fields can be opened and operated under. There are two sides to every contract. Congress may and can frame a leasing bill, yet capital may find it impossible to operate under it. I judge that it is your intention at this time to try and frame a leasing bill, one as near to the fee-simple title as it is possible, that the leasing feature, as Mr. Mondell put it, is to regulate and to restrain monopoly and still bring about a businesslike mining of the coal.

The Bering coal field, of which I have more knowledge than the other fields in Alaska, is structurally different, as you are aware now, from the coal fields in most of the continental United States. This holds true in most of the coal fields of Alaska. The coal is broken up and stands on end, instead of laying, as it does in Illinois and other parts of the United States, in blanket deposits. Therefore, the question of opening the Bering coal fields presents one of the engineering problems that must be taken into account. There are parts of the Bering River coal field where it will be impossible to open a mine at anything like the same cost and commercial result as in more favored parts, owing to the topography of the country.

Here is a small map showing some of the present coal locations. I was not able to get a larger one. I think you gentlemen have a fair idea of how the Bering River coal field lays. To the extreme east [indicating] of the Bering field lays Carbon Mountain. Answering a question this [indicating] is a Government map taken from the Ballinger-Pinchot hearings.

(At this point the map was put on the wall to be used by Mr. Ryan to illustrate his remarks.)

At the extreme east of the field we have Carbon Mountain. This deposit is supposed by the Geological Survey to extend under the glacier, and no doubt does, but we may leave the possibility of that out of the question. Whether it does or not it would not be accessible for mining at this time. To attack the extreme eastern portion of Carbon Mountain and such act would necessitate tunneling two or three miles under and into the mountain.

I might say this portion of the field, in Carbon Mountain [indicating] has peaks and ridges 3,600 feet high and averages in the neighborhood of 2,500 feet. It can be attacked from Canyon Creek, which cuts through here [indicating]. This part of the field contains the anthracite coal. You will appreciate that anthracite coal has no great commercial value at present on the Pacific coast. A demand might be built up for it through domestic or other use, but at the present anthracite coal would meet with a very slow market.

The CHAIRMAN. Why is that, Mr. Ryan? It is the highest quality of coal known, is it not?

Mr. RYAN. Yes; but to use it domestically—very little on the coast at present—people have got to change their methods and burning apparatus, and do one hundred and one other things. It takes them time to change methods and mode of doing things.

Mr. GRAHAM. And it is not adapted to commercial use, such as the making of steam?

Mr. RYAN. Yes and no. You would have to adapt your grates.

Mr. KENT. It does not make coke either, does it?

Mr. RYAN. It does not make coke.

On the west side of Canyon Creek, these claims [indicating], taking up the entire field betwen Kustaka Glacier and Canyon Creek, contain the Cunningham group. These nine claims [indicating] are known as the Chisolm group. The 33 claims are the Cunningham group. That is about all the coal known of in that particular locality. As Dr. Brooks said, less than 10,000 acres of coal.

On the west side of Kustaka Glacier we have the English group—the Stracy group, so called. This group consists of about 39 or 40 claims, I think, and contain all the available known coal at that point. This is supposed to be the best of the bituminous coal and coking coal, together with the so-called Cunningham and Chisholm claims.

To the extreme west, to this line of demarkation here [indicating], Dick Creek, we have the semibituminous coal.

Very little real development has been done in this part of the field outside of the McDonald group; the coal measures or outcroppings you might call them, are not so well exposed or so plentiful as are the outcroppings and the showings on the English company and the Cunningham group, nor has there been anything like the same development work done on the coal measures.

A serious question arises as to the ability to attack this coal in many places for mining purposes; and that reduces the possibilities of available leases on accessible coal to rather contracted areas. What I mean by that is that a few leases will control the coal at the most accessible and cheapest mining points, and that any leases taken after that have to consider very much increased expenditure in order to meet the cost of the coal taken out through the more favored points of attack, which all you gentlemen can easily appreciate. To pass to the bill before you, the first proposition that attracted my attention in considering this bill was the wording on line 23, page 2, "subject to all prior valid existing rights." You see the coal fields there [indicating]. I think it was stated yesterday there were something like 80,000 acres of coal land located in this field, yet there are supposed to be but 35,000 acres of known coal. I have no doubt that is true; and it is safe to say there is not a single acre of coal in the Bering River field but to which an existing valid right is claimed.

Mr. LENROOT. Just what do you mean by that "existing valid right"?

Mr. RYAN. When I say "existing valid right" I mean a claim of the locater.

Mr. LENROOT. I understand what you mean now.

Mr. RYAN. He feels he is and has been illtreated by Congress. He feels he has been illtreated by the Interior Department—by that I mean that he has not had his day in court; he has not had a fair trial, as he sees it; and the confiscation of his property would not and could not have taken place if he had been allowed to go to that court. In that way I mean that he retains a claim or right to the ground and that he is yet going to have something to say or some redress at some time or other.

The CHAIRMAN. It is in evidence here—I do not know whether you recall it or not—that about 561 claims have been canceled and that about 566 are yet unadjudicated. Does your statement apply to those already adjudicated the same as to those that are not?

Mr. RYAN. It certainly does.

The CHAIRMAN. Are they still claiming to have rights after the cancellation?

Mr. RYAN. I judge so. I can not say that they have come directly to me and told me so, but I believe it. The Cunningham people are holding possession of their ground. I should like to ask Mr. Finney a question. When were the Cunningham cases canceled by the Interior Department?

Mr. FINNEY. They were finally disposed of during the year 1912.

Mr. RYAN. Thank you. The Government took out coal for a naval test last year through the Navy Department and the Bureau of Mines. The Cunninghams were in possession then and kept in possession, and, I believe, gave the Government authority to go on their ground and mine coal. Whether or not the Government needed their authority I know not. It was a prima facie case that they were contending to still have some claim. I do not think they have abandoned the claims. I did not intend to cite any particular case. I do not care to be invidious. I am not in these gentlemen's confidence as to what they intend to do.

Mr. FERGUSSON. Before you leave that point, let me ask you this: Did the Government recognize a possessory right in the estate?

Mr. RYAN. I do not think they did. I know they went up there and onto the ground. I think they got peaceful possession with consent of the Cunningham agents at Katalla to mine whatever coal they wanted.

Mr. KENT. They did not shoot the Government up, in other words?

Mr. RYAN. They had and kept two men on the ground, paying them as caretakers, while the naval coal was taken out; that they were holding a possessory right after the cancellation I have no doubt. I do not know but that the locators here on Carbon Mountain are going to do the same thing. The claims to this [indicating] ground have not been adjudicated on; likewise the English company's ground over which criminal cases were disposed of in Seattle the other day. It seems to be the consensus of opinion expressed by the press of Seattle that the Government having lost out in proving fraud of any kind against these locators, that they will now get patents to their claims. Whether that follows or not I do not know, but that is the sense of public feeling expressed in the press after the trial of the cases.

Mr. BALLAINE. Which papers have expressed that opinion?

Mr. RYAN. I read it in the daily papers. Read the papers, why don't you. It is in both the Times and the Post Intelligencer, and I hear it in general conversation that the men now get their claims.

Mr. LENROOT. Did or did not that follow afte rthe acquittal in the Matanuska district of Mr. Frost?

Mr. RYAN. In Chicago?

Mr. LENROOT. Yes.

Mr. RYAN. I could not say that. I was not there. I do not want to be understood that I say so. I am only repeating it to show that these locators think or imagine they have something left to fight for. I state this positively, and, perhaps, it is the best way to so state it. I do not know of a coal claimant—and I know a great number of them without individualizing any special one—that has given up hope of not being able to realize something out of his locations in the Bering River field, and I have lived there now since 1907.

Mr. KENT. By hold over or patent?

Mr. RYAN. I could not say. Mr. Joslin the other day addressed this committee. He thought you ought to amend this bill and put a clause in it that would treat with these rights, and the Congressman from Illinois, I think, asked him if he wanted to kill the bill by so doing. He said no, but that something should be done. That same feeling exists in the minds of locators. To what extent, or how they are going to carry it out, I do not know.

To pass on, I will take it for granted that the bill is perfectly satisfactory in other ways, and it is a good working bill in every way. I go to the Secretary of the Interior to get a lease. I get the terms of the lease, and I find this clause in it. The lawyers representing the capital that I go to, say "Mr. Ryan, bring us a lease of a coal mine, not a lease of a law suit, as this is," and then ask me what is this "valid existing right" in there for. I could say there is no right existing in the department's mind. They would answer, "Why is it in there, then, if there is no existing right? What does it mean?" You raise a doubt in their minds, and they say our people "do not want that kind of a lease."

Mr. LENROOT. Let me ask you right there, if that provision remains in the bill, is it not your opinion that the entire field would be tied up by injunctions for years?

Mr. RYAN. I do; and it will be tied up also by——

Mr. GRAHAM. That language would not give them an additional right to get an injunction, would it? The injunction would have to be based not on the language in the bill but on the actual existing rights they could show in a petition. If this language is taken out of the bill, and they have existing rights which they can set up in court in a petition, can they not get an injunction anyhow?

Mr. RYAN. I am not a lawyer, but I have talked to many lawyers; there are different ways, as I understand it, that a locator can get into court. One way to get over an adverse decision of the Interior Department would be: Suppose the lands were opened to patent again; when such patent was issued from the department he could intervene and thus get into court and perhaps beat the patentee.

Mr. LENROOT. He could sue the patentee for a transfer of the patent?

Mr. RYAN. Yes; in the leasing case it would be something similar. Suppose I get a lease and go on the ground prepared to put $300,000 or $400,000 in improvements and plant. He, the claimant, would allow, I dare say, a certain time to elapse until something was done by me in the way of possession and improvements, and then he would serve legal notice on me of his prior right or claim. I suppose he could take me into court under the law of forcible entry and detainer, by coming there with his men and trying to take possession. There are a hundred ways to start a lawsuit. Now, I am only asking information of this committee. What position would this bill leave me in, and what position would the Government have to take, under this bill, to defend me, the lessee of the Government? It surely would not expect that I would agree to shoulder a lawsuit with the lease, and I do not think it would be any use for Congress to pass a bill of that kind. I ask you, Who would lease the land? I believe, and I know of my own knowledge, that there were a whole lot of men who went into the Bering River coal fields with bona fide intentions of good faith, but technically they may have gotten off wrong in some small way; they are suffering for the sins of some other locators, in whom the same good faith did not exist. I am talking about a majority of the poor men who went there; made bona fide locations on their claims. I could name 25 or 30 men that put their last dollar in them, lived there, spent years there, only to discover that they have nothing left to-day to show for those years of toil. There are others who perhaps deserved all they got.

Mr. FERGUSSON. Would you say that the poor man who went up there and got 160 acres in good faith, that he contemplated the working of that from the beginning himself?

Mr. RYAN. No, Congressman, I would not; because that intention does not exist physically in the United States coal laws. I would call it a farce to say that he intended to use the coal himself, for his own fireside. He did intend it (the location) to redound to his own benefit by sale or working and extracting coal for sale.

Mr. FERGUSSON. By selling it to a corporation?

Mr. RYAN. Either working it or selling it, or having it for sale, and getting a patent on it. He never intended to disobey the law. He never intended to go into an illegal combination. It was no dummy entry. The lawyers misled most of them, and they were good lawyers, too, as I think you will admit. It arose on the question of opening and developing a coal mine. It was a question of the amount of money necessary to be spent to open a coal mine. All the claims in Alaska had to be opened. To meet this requirement of the law on Carbon Mountain, in the anthracite field, I have seen a vein of coal exposed from wall to wall, perfectly exposed and clean; no mining was necessary to show a coal mine. To go in and dig out that coal could mean no more development than nature had done on it. The coal that the Navy took out, they got out of such a seam, that was opened and developed. The question always uppermost in our minds was what was meant by the development of a coal mine? The lawyers told us that the development of a coal mine, when that law was written, attached to the blanket deposits, as in the States of Illinois and Iowa. There you sank a shaft and showed the deposit of coal that existed, and perhaps raised

some of it to the surface. Then you had exposed and improved a coal mine, and that is the law as drawn for such deposits. Under the expediency of the time that coal laws were put in force in Alaska Congress thought it wise to write about four lines to meet the Alaska situation, i. e., "that the coal laws of the United States were applicable to the Territory of Alaska."

Then they found they were not applicable, because the Territory of Alaska had never been surveyed. That was in 1900. Four years afterwards that law was amended to suit conditions. I do not believe there ever was a particle of doubt in anybody's mind, but there was a tremendous lot of ignorance as to the requirements of the law among the locators. Can you blame them? When Congress passed a law and put it on the statute books that was not applicable to the Territory, and left it there for four years, an invitation to do something they could not do. Finally they were advised after four years that the law would have to be amended allowing them to make their own survey. Back to the bill before us. The first stumblingblock in this bill is the "valid existing right" clause, as I have said before. I hope Congress will see fit to deal in a just way with these coal claimants, but that clause ought not to stand in the bill. I tell you, gentlemen, if it does, it is going to be a stumblingblock to the leasing of any of the coal fields.

The CHAIRMAN. Right there, because that is probably a very important part of the bill, do you say that language should not be left in there?

Mr. RYAN. Yes; I do. I do not know what effect the taking of that language out of the bill will have, just as the gentleman from Wisconsin says, that the language out of it will leave the same result; but I hope not——

The CHAIRMAN. Just let me get your view. We will not debate what the specific language will be. Let me see what your idea is. Is it your idea that Congress ought to pass a bill disposing of the lands, without paying any attention to those occupants at all?

Mr. RYAN. If those men have a vested right, I do not suppose Congress has any authority to do so. That is as I understand.

The CHAIRMAN. Probably not.

Mr. GRAHAM. Let me see if I get Mr. Ryan's idea, to see if it agrees with my opinion of it. His idea seems to be that when Congress makes this law it will agree to warn and defend?

Mr. RYAN. That is it, to keep the lessees immune.

Mr. GRAHAM. Against the claim of others?

Mr. RYAN. Yes; they ought not to be liable to have to go into court and fight all kinds of actions; to be called muckrakers, that they were helping the Government to do its dirty work. That would be the proposition. No one would go into that kind of a lease. I ask the Congressman from California if he thinks capital will favor a lease with a reservation of that kind in it?

Mr. KENT. I would accept a lease in a moment where the matter had been settled by the Interior Department.

Mr. RYAN. But subject to valid existing rights?

The CHAIRMAN. There is no valid existing right if the matter has been adjudicated by the Interior Department and the motion they reviewed has been heard and passed on.

Mr. LENROOT. There might be a difference of opinion there.

Mr. GRAHAM. The language clearly implies that there is. You could not justify putting that language in there under any other theory than as you suppose there was.

Mr. RYAN. There must be something.

The CHAIRMAN. You mean beyond a valid adjudication?

Mr. RYAN. I can not say. You put it in there, and it is just as you were saying to Mr. Mondell, if he puts all these tremendous exactions in it might be a grand thing, in fact you can put in everything that the poor lessee shall not or can not do, fill the bill up with impossibilities, and then find it very hard to get a lessee to carry out your ideas or develop the coal fields of Alaska.

The CHAIRMAN. Let me ask you this, to get your opinion again: It was undoubtedly the theory and the thought of the Secretary and the conference that joined with him in the preparation of the bill—Mr. Finney, the law officer of the department is here, and I think he will bear me out—that it was the idea of the framers of the bill to leave the claimants up there precisely in the attitude that we found them, neither to take away from them anything or to give them anything. Mr. Finney, am I right about that?

Mr. FINNEY. That is correct, Mr. Chairman.

The CHAIRMAN. And if our language does not imply that we certainly want to make it imply that, and doubtless will. We have members on our committee who are the best lawyers on the committee who think the language does not reach that far. So, to sweep away trouble, I want to join with the gentlemen, if they are right in their construction, in making it do that specific thing. If the committee does that, what would be your view about it?

Mr. RYAN. Suppose we view it from that standpoint. I say I do not think that capital under that condition would have anything to do with it unless they went to these locators and had a settlement with them first.

The CHAIRMAN. What settlement has the Federal Government, any lessee, or anybody else to make with those 563 fellows whose claims have been canceled, and whose case is closed? What settlement has anyone to make with them?

Mr. FERGUSSON. Those cases have been closed by the department.

The CHAIRMAN. The case is absolutely closed. There is nothing left to be done either for or against it.

Mr. FERGUSSON. Is it closed against a court of equity?

Mr. RYAN. Is it? That is what I have been asking.

The CHAIRMAN. A claimant that prosecutes a land case through the department has no appeal to the courts. That has been a question in legislation here, where some have favored it and some have opposed it, ever since I have been a Member of Congress, to give that right, but as yet nothing has been done.

Mr. FERGUSSON. Is a court of equity ever shut out from protecting a man in a valid vested property right?

The CHAIRMAN. Oh, absolutely. A homesteader can come and prosecute his claim, first, before the local land office on a contest; second, before the General Land Office in Washington on appeal; third, before the Secretary of the Interior on appeal; and fourth, he can have the board of review, which is an additional tribunal in the

Interior Department here. After that is done his case is closed and he has no appeal. If he wants to bring a suit in court, the court will answer him by saying that his case is closed and they have no jurisdiction over him. He can not go any further than that.

What rights have these people to be adjudicated or hurt by anybody after their case is closed?

Mr. LENROOT. Is not this the situation, Mr. Ryan: Under the present condition of affairs, these cases having been adversely decided, the reason these gentlemen can not get into court is that they can not sue the Government?

Mr. RYAN. I suppose so. That is what they all say.

Mr. LENROOT. Would this language in the bill, "subject to valid existing rights," and the lease made—is it not the thought of the bill that that lessee shall not stand in the shoes of the Government, but shall stand in the same relation that a patentee does, and therefore it would permit him to go into a court of equity to try his case?

Mr. RYAN. That is the question I wanted to ask you first. Does the lessee, under this bill, stand in the same relation as a patentee would to the Government? I have it on the best authority, and I never heard it contradicted as yet, that supposing you are wrongfully thrown out of your location, say a mineral one—we had it exemplified in the Nome cases. Supposing, I say again, you were thrown out wrongfully by the department, and one of you gentlemen were getting a patent to the same ground; you could attack that patent; that is, you could attack the title through the patentee—you could bring him to the Supreme Court—but you could not attack the Government. Is that so, or is it not?

The CHAIRMAN. You could attack me for any dereliction of my own, not for any supposed claim that you had which was closed against you.

Mr. RYAN. I do not know that stop. I stop there and ask you the question.

Mr. LENROOT. But, just remember that he can attack you so far as dereliction of the department is concerned upon questions of law. If they had erroneously decided a question of law and thereby cut out Mr. Ryan he may sue the patentee and get a transfer of the title.

Mr. LA FOLLETTE. Just a moment. Within two weeks the Secretary of the Interior has been mandamused in a homestead case.

The CHAIRMAN. That is for failure to perform a duty which the law imposes upon him, which, of course, is a common occurrence. For instance, if Congress grants me the right to a patent and the Secretary refuses to give me the patent under that right, of course the Secretary, an administrative officer, can be mandamused to do a specific thing which the law requires him to do; but the Secretary of the Interior, or the Commissioner of the General Land Office, can not be mandamused by the courts to do a thing which is among his own administrative duties to do.

Mr. LENROOT. That is true. But take these very cases. Supposing the Department of the Interior cancels some of these claims by reason of failure to open and improve the mine, and that depends wholly upon the construction of the law as to what is the opening and improvement of a mine. Then they get into court, and the court decides that the Secretary of the Interior should construe the

law as to what constitutes the opening and improvement of a mine. Then they are in court and can get title.

The CHAIRMAN. If the gentleman's construction of the law was right, there would be no such thing as ever closing a case that was pending in the department.

Mr. LENROOT. There is not as far as erroneous decisions of law are concerned.

The CHAIRMAN. Who decides whether they are erroneous or not?

Mr. LENROOT. The courts.

The CHAIRMAN. Not at all. The gentleman is entirely wrong about that. That has been the sole and only thought in this committee and the other committee for the last dozen years, that they should have the right to appeal from the department to the courts, which has never yet been granted. We have had that bill up time and time again.

Mr. LENROOT. You do not get my point. They can not get into the court against the Government, but when the man parts with his title they can then get at the man who has parted with his title, and if they can show erroneous conclusions of law they can get the title away from the patentee. I just had a case, a bill reported out of this committee two weeks ago, where the Government gave to my man a patent. The Supreme Court of the United States caused a transfer of the title because of the erroneous conclusion of law, and I got a bill through giving relief to that man.

Mr. GRAHAM. But, Mr. Lenroot, you do not think, do you, that the granting of a lease to the lessee would be at all tantamount to the granting of a patent to a patentee?

Mr. LENROOT. That is the whole question right here. If you say, "subject to valid existing rights," then it implies that the lessee shall not stand in the same relation that the Government does. That is the whole controversy.

The CHAIRMAN. Why thrash over a straw where we are all practically agreed that the ultimate judgment of the committee will be that we can not take anything from or add anything to the relative rights or possibilities of these claimants.

Mr. LENROOT. It is not thrashing over a straw, because we have got to in this bill determine what relation a lessee is going to have to this matter, or whether he is going to stand in the shoes of the Government.

The CHAIRMAN. Let me ask you this: Is it your opinion that the committee has jurisdiction to legislate away rights that are vested?

Mr. LENROOT. No.

The CHAIRMAN. Let me follow that with another question and then I will get your position. Then on top of that is it your position that the committee ought to do more or less than to leave the claimants exactly where they stand?

Mr. LENROOT. I want to leave the claimants just exactly where they stand. If they are shut out from getting into courts now, I want to leave them to be shut out.

The CHAIRMAN. So do I. I am not in favor of furnishing to them an additional tribunal to have their causes adjudicated, and neither are you.

Mr. LENROOT. No.

The CHAIRMAN. We are agreed on that, and I think that is the consensus of opinion around the table, and why give longer any particular stress to this. My construction was this, and if my construction is faulty we have Mr. Finney, the law officer, and we can get the Secretary here, and we can modify it with a specific proviso that we leave the entrymen precisely where they stand, affording no additional relief or additional penalty.

Mr. FERGUSSON. Let me ask you does not that bring us to the point that Mr. Ryan has made, that under this lease they will practically be all locked up, these Cunningham claims and the other claims, even including the 566?

The CHAIRMAN. I am not in accord with some of the constructions of the law here. The construction of the law, according to the gentleman from Wisconsin, Mr. Lenroot, is that even though the case is closed by the Interior Department, even though they have pursued it before the local land office, they have tried their case before the Commissioner of the General Land Office, Mr. Dennett or Mr. Tallman, then they have tried it before the Secretary of the Interior, Mr. Fisher, or Mr. Lane, and, fourth, before the board of review, the case is not closed. If it is the view of the committee that there is no such thing as closing the case, this, so far as the Bering River field is concerned, is probably a nullity; but probably not as to others. I do not agree with that construction of the law at all. I believe that a case can be closed in the department, and I believe when it is closed, it is closed.

Mr. FERGUSSON. As against the Government, I grant that; but is it closed against the lessee, because you will have to admit it is not closed against a patentee?

The CHAIRMAN. Oh, yes; but I think that is borrowing trouble that will never be realized. That being true, the Bering field is sewed up and can never be realized, can never be repatented, but we have just got to keep our hands from it, and we are helpless. If a man once segregates a title by fraudulent filing, is it the opinion of you lawyers down at the other end of the table that the Government can never close that case?

Mr. LENROOT. It is closed as to questions of fact, but as to third parties it is never closed on questions of law.

The CHAIRMAN. Let me suggest this. I lived in a town and practiced law before the land office for six or eight years right in my town. If the position you take is correct, every contest case that was tried, even favorable to the contestant, and he got a filing, he would never get a good title, he would never get a title but that it could not be attacked collaterally.

Mr. LENROOT. The only thing that can prevent it is the statute of limitations. If he can show that the title of the patentee rests upon erroneous conclusions of law and not upon questions of fact, he can at any time before the time expires come into court.

The CHAIRMAN. All right. If that is true in all cases, is not that identically the procedure we follow in every land office in the United States, and is not every one of the 700,000,000 acres of land yet to be disposed of governed precisely by that thing?

Mr. LENROOT. It is.

The CHAIRMAN. How can you assume that the case having had three trials and finally closed, that it is not settled according to the

law and facts, and how can we legislate on the assumption that the department has gone wrong on false assumptions of fact and law also?

Mr. RAKER. May I interject——

The CHAIRMAN. We have a witness here.

Mr. LENROOT. This is a very important point.

The CHAIRMAN. It is, but do not let us get clear away from the witness.

Mr. RAKER. We will not get away from the witness on this matter. The commissioner stated the day before yesterday that none of these cases were closed, finally closed.

The CHAIRMAN. Oh, no; he did not. He stated 563 were closed.

Mr. RAKER. Will you let me make a statement?

The CHAIRMAN. I do not want the gentleman to misstate the facts. That gets us in trouble.

Mr. RAKER. I am not misstating the facts.

The CHAIRMAN. You are if you state that.

Mr. RAKER. I am quite familiar with the history of land office litigation, and I know of litigation that has been going on 20 years, and I know it is never closed until a patent is issued, and no decision by the department is final but what they can review it if they desire.

The CHAIRMAN. That is true.

Mr. RAKER. That being the fact, if we put anything in this bill to authorize the department, they can go back, review, and go over these claims if they want to, and I, for one, do not think they ought to do that.

The CHAIRMAN. Neither do I. We are in accord about that. You may proceed, Mr. Ryan.

Mr. RYAN. This is the first snag you strike in taking a lease under this bill; it is under that cloud of prior location, and that is why I want to thoroughly go into it before going on. I do not know whether it is possible for the Government to stand between the lessee or take such a position as the lessor that the lessee is in no danger of legal attack; that he is immune from any action of the prior locators. I do not know whether it is possible to write a bill that way or possible for Congress to pass a bill that way, but it is the only square way, and not allow yourselves to be put in the position that you are trying to palm off a lawsuit on the lessee, but rather that you are giving him a straight lease as would a private individual.

I suppose you know, as I know, that the majority of the coal lands in the United States are leased or subleased to-day. You will appreciate, however, that the leases are written very broad, almost tantamount to a fee simple title.

Mr. RAKER. In the 561 cases disposed of by the Government, is it your view that the legislation should be such that the Government can dispose of these claims absolutely free from any entangling litigation that these people might claim exists in regard to this land? In other words, they have been decided, and your view is they ought to end, as far as the Government is concerned?

Mr. RYAN. I am not arguing that point. What I think the Government ought to do when they are giving those leases is to stand up fair and square and hold the lessee immune from any loss or damage through or arising from prior locations.

Mr. RAKER. You do not quite answer my question.

Mr. RYAN. Then I did not understand it.

Mr. RAKER. The point is, the Government having decided these cases, and they having become final to the end that there is no action which can be taken by the claimants, is your view that the Government ought to take that land as public land, free from any prior claim of anybody, and dispose of it, eliminating those that have been claiming some right?

Mr. RYAN. In the leasing?

Mr. RAKER. Yes.

Mr. RYAN. Yes; as far as the lessee is taking a lease to mine coal.

Mr. RAKER. To wipe out these prior claims?

Mr. RYAN. Yes; fairly and justly, so far as the lessee is concerned.

Mr. KENT. As I understand it, there is no contention but what the Government, after the decisions of the Interior Department, owns that land free from any possibility of further litigation, and that the Government can go ahead and operate and thereby deprive the prior claimants of the cost of their claim; that is, the coal values. There is no contention about that, and I do not see why under those conditions the Government could not authorize somebody to do what it could do itself.

Mr. RYAN. That is all. I only pretend to make a business statement. If I come to the Government for a coal lease, I do not come for a lease of a lawsuit. And if this bill in any way opens up any lane or avenue that could possibly create a lawsuit I should advise capital not to touch it. I have been advised by lawyers that under the bill as it reads now you are not getting a lease of coal lands, but a joint lease of a lawsuit and coal lands, and you may spend as much on the lawsuit as you do in the development of your coal lease.

Mr. LA FOLLETTE. Do you want the Government to save the lessee harmless from any loss occasioned by a failure of title?

Mr. RYAN. Any way you put it, Congressman, so that the Congress will say to the lessee, "You are immune."

Mr. LA FOLLETTE. You want the Government to protect the lessee?

Mr. RYAN. Yes; it should do so—and be square about it.

Mr. LA FOLLETTE. Does it do that in a patent?

Mr. RYAN. Yes and no; but you can not draw any comparison on that ground. What condition have you in Alaska? A monopoly has been talked about. The first thing you have to contend with in Alaska is coal land, patented and putting out coal, you have no more power to regulate its output or what it shall do or not do than you have in Pennsylvania to-day.

There is a man here who has a title and a patent to his land. He is mining coal on Cook Inlet. Now, you are going to lease coal lands in competition with him. You must bear that in mind when drawing this bill.

Mr. GRAHAM. By freehold I think you mean a fee-simple title?

Mr. RYAN. Yes; a fee-simple title, I mean.

Mr. FERGUSSON. The strictly legal title, but not the equitable title.

Mr. RYAN. The strictly legal title. He may mine how he pleases and when he pleases. He may sell his product when he pleases and to whom he pleases. You propose to lease a coal mine in direct competition with him, and the least you will say and agree with me

as business men that this condition must be the corner stone of your thought when amending this bill, because we are attempting to get men to put money to compete with that condition, and we must recognize it.

The Secretary of the Interior told you very plainly that he proposed to give patents to any of the claims in the Bering River district that are clean and legal, and I am sure when he said that, and he said it in good faith, he will give patents to the claimants who have tried to comply with the law in good faith. Your lessee runs right up against this competition. That being so it is the cornerstone condition of what terms the lease should contain to be a business transaction. And I ask you, is not that the common sense view of it, having given patents to part of the field, and going to lease the other part, are we not obligated as business men to make the leased land as available as the patented land to capital?

Mr. LA FOLLETTE. You contend, Mr. Ryan, that there will be a cloud upon the title of the lessee and that cloud should be lifted before the lease is made?

Mr. RYAN. Yes. I am not a lawyer. I did not go into it myself. I asked some very prominent lawyers. They said: "If it is leased subject to prior valid existing rights, you will have to fight for it sometime or other, and if they beat you you have no redress."

Mr. GRAHAM. Would it meet your view if that clause were left out, "subject to prior existing rights"?

Mr. RYAN. I am not a lawyer. If it is left out in verbiage and still leaves the effect in it, it will be just as bad. I know capital would be perfectly willing to go into the Bering River fields and take a lease of the coal lands and open and develop them. I look at this bill as a business man does, and from that standpoint the first thing that catches the eye, when submitted to the lawyers, is this clause, then they hear the history of the Bering River fields as I know them since 1900. I imagine they will say, what did Congress put it in for? If there are no valid existing rights why recognize them? If you do not put it in, and still we know such claim exists and can be pursued through legal channels, the effect is just the same. I am only showing you the condition you have to face now and protect your lessees.

Mr. GRAHAM. The point is in one case you hang out a danger signal, and in the other case you did not.

Mr. RYAN. In one case you are straight——

Mr. KENT. One other question: What would be your idea of a situation like this: We will suppose the Government has decided through the Department of the Interior that these claims are invalid. Thereafter a lease is made, and then the man who tried to get the patent sues the lessee, and the lessee throws up his contract and quits. Would that suit your contention, or have it go back to the Government again——

Mr. RYAN. I imagine that the suit would drop with the dropping of the lease. The prior claimant would have to wait until another lessee showed up; he would then go after him, but he naturally would not attack the lessee until after he had put in $50,000 or $100,000 worth of improvements. He would be foolish if he did. Having this money invested in the case the lessee would have to fight it out.

Mr. RAKER. Is not the simple proposition out of this and are we not simply reasoning in a circle to try to give these people a chance in court? But if we get right down to fundamental principles in the matter it will resolve itself in this line: Here is Government land and these people are rejected. The Government can put them off as trespassers now, can it not?

Mr. RYAN. Maybe so.

Mr. RAKER. The Government can put off everybody down there as a trespasser on that land under the law as it stands to-day. Is not that right?

Mr. RYAN. I suppose it could. I do not know.

Mr. RAKER. That being the case, the title is still in the Government, notwithstanding the lease, and it can put every lessee in possession of that land without a single man being in position to contest the lessee unless this bill gives them a right to go into court, as it is now provided.

Mr. FERGUSSON. Let me make a suggestion right there for the lawyers to consider. It is to this effect: It is a very serious doubt in my mind that a lessee stands in the same relation with reference to an equitable title as a patentee.

Mr. LENROOT. I think so.

Mr. FERGUSSON. I have no doubt on earth a patentee if he holds a patent, no matter how long, can be held a trustee and can be made to convey that patent to somebody else on the equity of the case. I have spoken to Mr. Finney on that. I think it would be a good suggestion that we hear Mr. Finney, as the law officer of the department, as to any investigations he has made on that line. I will just ask him if he wants to say something along this line, and this whole controversy will be settled if we conclude that a lessee does not stand in the same attitude as a patentee with reference to being held to hold some one else's property.

Mr. LENROOT. Right there, Mr. Fergusson. We might settle it to our satisfaction, but Mr. Ryan's suggestion is that capital might not be satisfied with those provisions.

Mr. FERGUSSON. That would be practically shutting it up. If we settle that question it will follow that we strike it out entirely.

Mr. LENROOT. I would like to ask Mr. Ryan, just from the layman's standpoint, whether he believes this would be more attractive to capital to strike out the language we have been talking about and insert a provision that would in effect do this: Provide that the possession of the lessee should for all purposes be deemed the possession of the Government and that the lessee should occupy the same relation to the property as if operated by the Government.

Mr. FERGUSSON. That follows as a legal proposition, but there is no objection to putting it in.

The CHAIRMAN. Unless Mr. Ryan has something he wishes to suggest right now let us hear from Mr. Finney.

STATEMENT OF MR. E. C. FINNEY.

Mr. Chairman, I do not know that I can add anything new to what has been said by the various members. The fact is that so long as the Interior Department has a case within its jurisdiction not finally disposed of the courts can not and do not interfere.

Mr. GRAHAM. By finally disposed of you mean the patenting?

Mr. FINNEY. Until patented or canceled; until a final decision has been rendered by the land department, and its decision carried into effect. A reference was made to a mandamus case, but the fact of the matter is that the department has won case after case in the courts of the District here where we were attempted to be mandamused, and in the particular case mentioned had we carried it to the court of appeals the judge below would have been reversed, in my judgment. We did not carry it up, because we were convinced that we were wrong on the facts in the case, and we corrected our own error.

Mr. FERGUSSON. Let me ask you this question right there. It being conceded that a patentee should be held trustee for the benefit of some other third person on an equity he has, direct your mind to this proposition, that obtains only when the legal title has passed to the patentee. As long as the legal title is still in the Government, as it would be in all of these cases, can not the Government make a lease? And there would be no danger that anybody on any equity can hold that lessee as trustee for the benefit of any third person.

Mr. FINNEY. There have not been very many cases decided in the courts where the Government has, through error of law, patented a tract of land to the wrong man, where the original owner of that land has gone into the courts and has had the patentee declared trustee for him.

Mr. LA FOLLETTE. What would you say about the Government committing error on the facts?

Mr. FINNEY. I do not think that is subject to review by the court. I think the determination of the facts is exclusively in the Department of the Interior.

Mr. FERGUSSON. Taking these coal lands that Mr. Ryan has been talking about, as long as the legal title is in the Government, whether they have held them for cancellation or whether the party acquiesces in it and is still in possession, as long as the legal title is in the Government is there any danger under any law or decision that you know that the lessee would be held as trustee for the benefit of these other parties?

Mr. FINNEY. No; I do not think so. As long as the legal title is in the Government there is no opportunity for the claimant to get into the courts. And, furthermore, the Government is doing that sort of business right along. We are canceling land claims in forest reservations in various reserves that have been made for public uses, and then immediately entering into possession of those lands and utilizing them, cutting timber from them, and possibly permitting other people to use them. I do not know of a single case where one of those claimants has been able to successfully assert an adverse claim to the Government. Under this very bill, it seems to me, if we cancel, as we have canceled certain coal claims in Alaska, as suggested by Judge Raker, we can immediately proceed to eject the former claimants if they have tried to maintain those lands. We can take the Cunningham claims to-day.

Mr. KENT. Is not the case you mention of a claim whereon there was timber, then permitting somebody else to cut timber, exactly analogous to this?

Mr. FINNEY. It seems to me it is exactly analogous. We have done that many times, and I know of no case where we have been successfully interfered with.

Mr. GRAHAM. Was there any case where an attempt was made to get after the usee?

Mr. FINNEY. I do not recall any case at the present time. There is another thought that occurs to me in connection with this. We do not part with the legal title under this bill. We have retained the legal title. We have leased the coal deposits and we retain title to the coal deposits until the lessee takes them out of the ground, as I undersand it. In other words, he pays a royalty on the coal he mines month by month. If he mines coal for six months and then stops the remainder of the coal in the ground belongs to the United States, not to the lessee. It is another argument, in my mind, to show that there is nothing for that former claimant to recover.

Mr. FERGUSSON. Do you not think it is an absolute vice to have the clause "Subject to existing rights" in the bill, because that can only refer to an equity right that they can not exercise against the Government, although they could against the patentee?

Mr. FINNEY. After hearing the discussion and the possibilities I should be inclined to strike out those words, "subject to any valid existing rights."

Mr. FERGUSSON. As long as the legal title is in the Government that is just simply a club thrown in. It is throwing a monkey wrench into the machinery.

Mr. LENROOT. Right there, Mr. Finney; what is the principle, as you take it, by which a claimant whose claim has been canceled gets into court, where a patent has been issued to a third party? In other words, is it solely because the Government has parted with the legal title, or is it because a third party is asserting rights obtained from the Government adverse to his own, and it is therefore a controversy between citizens which permits them to get into court?

Mr. FINNEY. It is a controversy between citizens in a sense, but the action is predicated on the fact that the Government of the United States, through an error in the construction of the law, disregarded the rights of one party and conveyed that land to another.

Mr. LENROOT. I understand that.

Mr. GRAHAM. That is, has conveyed the legal title as distinguished from the equitable title.

Mr. LENROOT. I suppose whether the Government parted with its whole title or whether it parted with certain rights in that property would be sufficient to give jurisdiction, provided the legislation on which it is based could be so construed as to make the lessee stand as an independent proposition and not in the shoes of the Government?

Mr. FINNEY. All the cases that have arisen, so far as I am advised, have been instances where the Government has parted with the whole title.

Mr. GRAHAM. This is the very case for raising the question in your mind, because there is really nothing worth having in the Bering River field except the coal, and if the coal were taken away there would be nothing left for the locator.

Mr. LENROOT. That is true.

Mr. GRAHAM. Everything that he wanted to get is being taken away from under his eyes while he looks on, and simply because the legal title, the patent, has not passed. I think, though, Mr. Lenroot, it is reasonably clear that in such case there can be no way he could get into court, because the very thing which would make the bridge for him to cross over into court, the patent, has not passed.

Mr. LENROOT. He might not get into court, so far as getting a confirmation of the title in himself is concerned, but if the lessee is taking out coal and therefore exercising rights adverse to his valid subsisting rights, assuming that the department is erroneous, would he not have a right of injunction there to prevent that?

Mr. GRAHAM. I think not. The whole matter there is technical and grows out of that very arbitrary and perhaps unjust, though necessary, holding that the citizen can not sue the Government. There is the starting point which is inherently unjust, but it is arbitrary and probably necessary. That starting point is absolutely necessary, and the starting point in this case would never arise.

Mr. LENROOT. I grant that, if the lessee does stand in the same relation to the property that the Government does, but we have a question on the bill as it stands, even striking out this language as to whether he does or not.

Mr. FERGUSSON. Is the lessee taking up his own coal or the Government's coal?

Mr. LENROOT. He is taking the Government's coal.

Mr. FERGUSSON. The legal title is in the Government.

Mr. GRAHAM. And presumably for the Government's benefit on account of the royalty he is to pay.

Mr. RAKER. Let me put this to Mr. Finney in connection with the former questions. As a matter of fact, the lease in a case of this kind—a coal lease—would be a transfer of the substance and the land itself, would it not? Let us get down to the facts. Suppose that here is a mine with a million tons of coal, and the people could take it out in 10 years, it would be a practical disposition of the earth or ground or substance itself, would it not?

Mr. FINNEY. I do not think I can admit it.

Mr. RAKER. The man takes out a million tons of coal. He gets a title to the coal, does he not?

Mr. FINNEY. After it is removed.

Mr. RAKER. The man removes it, and that moment it ceases to be real estate; it is personal property, and has been conveyed by virtue of the lease?

Mr. FINNEY. I agree to that.

Mr. RAKER. That is correct?

Mr. FINNEY. That is correct.

Mr. RAKER. If the prior locator had complied with the law and obtained title to that land of which the coal was part, and the Government had decided against him wrongfully on a wrong construction of the law, could not the prior locator immediately sue the lessee who had obtained this million tons of coal for the value of that coal in a suit in equity, compelling him to transfer to the prior locator the value of that coal?

Mr. FERGUSSON. I do not think that at all. It has ceased to be real estate.

Mr. RAKER. The question of real estate does not affect the man's right necessarily.

Mr. KENT. I do not see how he could possibly recover under any conditions for anything he had under the ground.

Mr. RAKER. I made my point clearly that it had not anything to do with what was in the ground.

Mr. FINNEY. I doubt very much if a party could succeed in such a proceeding.

Mr. GRAHAM. In such a case as that ordinarily he would have to sue the lessee for damages if that were feasible, and in this case it is not, and I think he would be without remedy.

Mr. FERGUSSON. I did not get Mr. Finney's answer.

Mr. FINNEY. I am not sure about the point, but I doubt very seriously whether one of these parties could succeed in that sort of a suit.

Mr. FERGUSSON. The party would be proceeding for his real estate, would he not? If he could proceed at all he could proceed for his mine.

Mr. FINNEY. The claim, I think, would be for the land and the contents. Mr. Raker's thought was that if the lessee removed the valuable contents of that land and converted it to his own use and possibly the prior claimant would have an action to recover.

Mr. RAKER. To go back again, what I am getting at is this: That this million tons of coal is all the value there is in the land. He extracts that value of the land within 10 years. Conceding that the prior locator had done all the things that entitled him to a patent save and except the erroneous decision under the law of the Department of the Interior, is it conceded at this time that a man could not go into court because it became personal property and adjust his rights in equity?

Mr. LENROOT. How would he get into equity with this proposition? It would be an action at law purely, would it not?

Mr. RAKER. No.

Mr. FERGUSSON. That would be based on the legal title.

Mr. GRAHAM. Judge, is not this true to start out with, that whatever rights the locator has depend entirely on his title to the land?

Mr. FERGUSSON. That is it.

Mr. GRAHAM. Is it not also true that you can not try title to land by indirection; that is, under a suit?

Mr. RAKER. You try the title to land in an equity suit, because it has to——

Mr. GRAHAM. You could not try the title to a farm in a suit to recover the rent or the crop.

Mr. RAKER. Not the rent; I agree with you on that.

Mr. GRAHAM. When coal is severed from the land it becomes personal property. You could not try the title to the land in a suit to determine who the property belonged to.

Mr. RAKER. If I prove it is my right and I was deprived of it by some erroneous decision, can it be possible that equity is so lame that I am not entitled to recover the very substance of that land?

Mr. GRAHAM. That would involve the question of title, and you can not try title in an incidental proceeding.

Mr. FINNEY. I think these fellows are down and out.

Mr. RAKER. I am assuming, just for the sake of the argument, that is it, and I am trying to find out from you if there is any possible way, either by lease or otherwise, they can get back into court and test it.

Mr. FINNEY. I do not think so.

Mr. RAKER. Does not this last provision under section 14 throw the door wide open to all these parties to go into court without any limitation on earth?

Mr. FINNEY. I think not.

Mr. RAKER. It reads:

SEC. 14. That the jurisdiction of the District Court of Alaska shall extend to and over any forfeiture or cancellation proceedings instituted under the provisions of section nine of this act and to any and all controversies which may arise between the United States and any lessee or other person, association, or corporation growing out of any disputes, controversies, or proceedings arising under this act or under leases issued hereunder.

You could not make it much broader.

Mr. FINNEY. The last two clauses are a limitation on the action which may be brought—"proceedings arising under this act or under leases issued thereunder," not arising under leases that may have occurred outside of and prior to this act.

Mr. RAKER. If you lease a man a piece of land you have no right to lease, the equitable title belonging to some one else, could not the third party come in and assert his rights?

Mr. FINNEY. I do not think he could come in. That is just the point. I do not think he could come in. Personally, I have some doubt about the advisability of allowing such proceedings to be brought.

Mr. LENROOT. Let me ask Mr. Finney this: I know it would be of great value to the committee if we could have some citations upon the relation of lessees to their lessors, and rights of third parties to raise questions of title. I think there must be some adjudications upon this subject.

Mr. FINNEY. Possibly.

Mr. LA FOLLETTE. Do you mean with the Government or private parties?

Mr. LENROOT. It does not make any difference. I think the same rule would prevail. No; not the same rule would prevail, but this would be true in any case, if a third party could not raise the question of the title of the lessee where he claimed an equitable title, at least it would be very material.

Mr. LA FOLLETTE. I know that has been done frequently. The lessee has been sued and has been declared to hold the lease in trust for another party.

The CHAIRMAN. Not where the Government did not have the legal title.

You may proceed now, Mr. Ryan.

Mr. RYAN. This question raises one of the big clouds, to my mind, on the leasing proposition. It would be raised by any lessee who was looking for capital and would be raised by capital which might wish to become a lessee under the bill. It is up to you, gentlemen, to so arrange it that it does not exist in the bill.

You can get an idea of the present surveys on this Government map. All the surveys are laid out north and south, east and west.

With a regular United States township survey it would be different. There would be some fractions. It would be hard to fit in if the present surveys were adopted, but I should say that the surveys, as Dr. Brooks said, for all intents and purposes in leasing the fields would work with the Government surveys afterwards put on the fields. I do not see any reason why it should be otherwise. These surveys are divided into 40-acre tracts, or, rather, can be.

There is another question I wanted to ask: Is there any provision in the bill for the improvements and plant that the lessee should put on in case of abandonment or forfeiture? I ask that for one reason. It is not at all beyond supposition that a man may go in there and have a very satisfactory showing in his mine for the first four or five years, and then he may lose coal measures. They might just peter out as they did in some of the Government extractions of coal. He naturally would have to throw up the lease. He would have his plant in place. I suppose he could remove that. But suppose the Government did not renew at the expiration of his lease; the plant would be there, and it would be of value, as was stated here yesterday. A plant you know does not wear out. It is operating daily. Parts of it do wear out, but it is repaired just like the rolling stock on a railroad. It would have to be kept up to the highest standard up to the last moment you are economically operating that mine. The hour you shut down your plant, it is in about as good order as it was at any time prior or when first installed.

The CHAIRMAN. I would say that the terms of the lease which the Secretary has authority to incorporate would undoubtedly settle all those questions.

Mr. KENT. That raises this question: If the terms of the lease are unreasonable so as to put an added hardship on the lessee, that would be one thing; but if the terms of the lease were reasonable, ought he not to take the same risk as the man who did the mining under fee would take?

Mr. RYAN. I agree with you, but you heard Mr. Mondell this morning. He suggested all the additions possible and safeguards to the Government from the lessees, or a combination of lessees, etc. I did not hear any suggestion of protection to the poor lessee offered.

Mr. KENT. The point was this: As in the case of a 99-year lease, when a man puts a lease on the property he saves part of his capital by not having to invest it in land. That is the theory of this.

Mr. RYAN. The capitalization here on his rental is pretty high when you figure it out, and, when taken with the unknown possibilities in the Bering River field, it would be a financial problem that could be worked out. I think the lessee will be taking as much risk, if not more, than the Government in that.

Mr. GRAHAM. What are your views as to what the amount of royalty should be?

Mr. RYAN. My views are few, Congressman. We propose going in there to mine coal. It will have to go into competition with the coal of the world. It has no free market of its own. It will have to go into competition with the freehold or patented claims that pay no royalty. You put a royalty of 25 cents a ton. My competitors would say that is splendid. That means 25 cents a ton for us on their patented coal property. It has to come out of the consumer's

pocket at some place or other. You can kill the market for Alaskan coal by putting on an extreme royalty, as you appreciate—such royalty as would deny competition. There is coal in the State of Washington. You heard Mr. Ballaine speak about the prices of coal. He was speaking about the retail price of coal put into his cellar and what a horrible injustice it was to pay such prices as he had. A good deal depends on the location of the cellar you are putting the coal into. You gentlemen who live in Chicago and other cities in the United States know that it depends on where your cellar is. You might live on Third Avenue and pay $5 per ton cartage, and a man living on First Avenue can get it put in for 50 cents a ton. The man on Third Avenue, up on a hill, may have to pay $5, as I said, a ton because he lives on the hill.

Mr. GRAHAM. I would have liked to ask Mr. Ballaine a question. How much of that $25 a ton at Nome was necessary to handle it at a clear profit? In other words, what could the coal have been sold there for at a reasonable profit?

Mr. RYAN. I can give a demonstration of that. A cargo of coal was brought from Comox, British Columbia, to Nome in 1904; it cost $1.98 a ton for freight. I think the coal cost about $3 or $3.25 at the colliery. The ship's charter was at so much a month. The freight figured out, as I said, about $1.98 a ton; the charter also called for the ship's coal to be supplied free—that is, what coal the ship burned on the trip. My estimate was that coal cost laid down at Nome less than $6 a ton in the roadstead; the roadstead at Nome is on the Bering Sea or open ocean. The coal was lightered ashore and stacked and taken care of for the winter. The cost of lightering the coal depends somewhat on the amount of shipping there is in the roadstead at the time. If a great many ships are in the roadstead that want quick dispatch, such as passenger boats, etc., the collier with the coal is paid demurrage per day while the lighters are in use. This raises the cost to the owner somewhat. It is hard to say what the exact cost of lighterage would be. I presume it would cost in the neighborhood of $3 or $3.50 a ton for the lightering of the coal ashore.

Mr. GRAHAM. Would that include stacking it?

Mr. RYAN. No; I would not say that would include stacking it. Stacking is done very much by machinery now. But they have always figured it cost around $12, $12.50, or $13 per ton laid down for the winter.

Mr. FERGUSSON. By items you have got it up to about $10.

Mr. RYAN. There are contingencies. You may have to restack some of it during the winter. You will have some breakage, bad bills—in fact, you have a hundred and one different things to meet. My advice to anyone that goes into the coal business is to estimate cost on your books at $15 a ton or you would have a balance on the wrong side when you get through with the deal in the spring.

Mr. GRAHAM. But if they had a harbor and proper dockage at the point of delivery they could get it delivered for $7.50.

Mr. RYAN. If they could dock at Nome, I suppose they could. Coal has gone up lately. This was a particularly favorable coal freight rate I speak of. You take an ordinary steamer in the Nome business, not a foreign tramp like this one was, and you will pay

$10 or more a ton freight on her, and she must get that price or the owners are not making any money. Remember, she goes only partially loaded at times, but go she must. And when you wind up your season it is no outrageous price at all, $10 a ton for freight. You can not better it.

The CHAIRMAN. What do you think of the area of the leasing provided for in this bill?

Mr. RYAN. I think the area of 2,560 acres seems to be the consensus of opinion as being all right. We have some very thick coal veins exposed in the Bering River field, and 2,560 acres, if these veins were thick and continuous, would hold a tremendous amount of coal. But if you make it less, if you make it mandatory that it shall be less, you might have a very sparse proposition, and the lessee would be up against it and could not do anything.

The CHAIRMAN. You would have to use discretion?

Mr. RYAN. Yes. This question of taking leases is another serious one. You gentlemen all realize from the discussions of the railroad bill that little is known of the coal possibilities of Alaska. There is nothing in fact known as to the extent of the coal in the Bering River field, and for that matter much less known about the value or extent of the coal in the Matanuska coal fields.

The CHAIRMAN. Do you mean the quantity or the quality?

Mr. RYAN. The quantity, and the quality too for that matter.

Mr. FERGUSSON. It is not sufficiently developed.

Mr. RYAN. No; there has not been sufficient development. There has been some surface development. In the Bering River fields we have many tunnels in over 200 feet. There has been a good deal of misapprehension as to the extent of the development in the Bering River fields. We have as I said some tunnels. In fact, some of the Navy test coal was taken from a depth of over 200 feet. Prof. Holmes has the maps of the entries, or the tunnels that were run on the veins, and he can give you the exact measurements, so as to put Congress in complete possession of the actual facts. But there has been very little work done as Dr. Brooks explained to you to show the depth or the continuity of these folded veins.

Mr. GRAHAM. I suppose where there is folding there will also be faults?

Mr. RYAN. Yes. Dr. Holmes could produce the man who did the mining there, for the naval coal. He could explain to you how the coal vein pinched out three times. It looked a fine vein when they started in on it, but three times they had to change their operations and shift the attack to get out the five hundred and odd tons of coal.

There is one advantage the Bering River coal fields have if it can be called an advantage, and that is the heighth of the coal above the water level for economic mining. We have peaks perhaps 3,700 or 3,800 feet high. We can hold an average of 2,440 feet as our mining depth. In many parts of the field we can attack the coal at that depth from the railroad level if it were deemed the most advisable way. Open the main tunnels and take the coal down from overhead. But nothing of that kind has been done as yet, and the question is yet unanswered, as to what coal is there. We are thoroughly in the dark. It is all presumption.

Mr. GRAHAM. While you do not know the best way, the most economical way to mine it, you do know a way? There is no question about that?

Mr. RYAN. To satisfy ourselves, Congressmen, we will have to go in and prospect it. You may take a lease on any of these fields, and it is common sense to presume before you should prosecute any heavy work, or order big plant or make costly improvements, and plan tipples, etc., you would make some thorough investigation by running tunnels or something to cut these veins and see the extent of them, and see what coal reserves could be counted on. We have a very good showing now. We can see and trace large veins on the surface, but that is all we know as to the extent of them.

There is no provision in this bill to prospect the field in any way except I suppose the Secretary of the Interior is going to say to the applicant coal lessees, you may go up there and prospect your proposition for a lease. I think there ought to be some provision in this bill setting that out clearly. There is going to be a tremendous lot of boom lessees ready to apply and some kind of bond should be required to stop fakirs.

Mr. FERGUSSON. You mean a sort of option?

Mr. RYAN. Yes.

The CHAIRMAN. A bond for performance of the lease?

Mr. RYAN. Perhaps. Suppose I wished to lease 2,500 acres in this part of the field [indicating]. The Secretary knows nothing about it. He has no information, nor has the Geological Survey. You heard Dr. Brooks on that yesterday. He said that their estimates were made from a superficial examination generally. They knew nothing beyond what they saw and what the original locators developed in driving the tunnels on a few claims. The Secretary naturally would say, "Give me a bid." The applicant lessee is not in position to make a bona fide bid. He does not know what he is bidding on. He does not know what coal is contained within the area he wants to lease, except what he sees on the surface. I think at least a year with a very small rental or, better, a bond to the Government that he will enter on the proposed area and prospect it in a bona fide manner in accordance with regulations laid down by the Secretary.

What you are up against in this proposition is that you will have boom corporations looking for leases. You will have boom corporations of every kind selling stock in coal leases at 5 cents or less on a dollar, and you will have boom prospectuses of the Bering River and the Matanuska coal fields that will startle the world as to their values. It is laying the possibility for a good get-rich-quick proposition, which you must guard against. If the Secretary can demand a bond of good faith or a certified check—and you can not make it too big to stop the fakirs—so much the better. It is very necessary to give this serious consideration.

The CHAIRMAN. There is a provision for an annual rental, which would insure operation.

Mr. RYAN. That does not amount to anything so far as taking a lease—25 cents for first year.

The CHAIRMAN. That will insure operation.

Mr. RYAN. To the get-rich-quick concern. Twenty-five cents an acre for a year would be a very small proposition, Mr. Chairman, where parties can have 2,500 acres to exploit for the suckers.

Mr. KENT. The poor man would be left out.

Mr. RYAN. He would not have any business in the game. I am only bringing out these practical points. I have good faith in it. If I intend to take a lease, I would like to know how to bid in a practicable manner under such lease, that would necessitate the expenditure of probably $25,000 and maybe more in going over and prospecting the ground before the lease was accomplished.

Dr. Brooks explained to you the difference in the coal fields. Each vein stands on its own merits, so to speak. In continental United States, in Illinois and Iowa and other States, you have these tremendous blanket deposits, 5 or 10 miles in length. Here you can put down your drills and get the thickness or your coal deposit. It is an easy proposition. The deposit is fairly uniform under that entire 5 miles square, or whatever it may be. But it is a different proposition in Alaska. You have all these veins dipping at different pitches, twisting and turning.

Mr. GRAHAM. Is there any similarity between the lines of coal there and in Pennsylvania and West Virginia?

Mr. RYAN. Not much. It is more broken up. I have some photographs which I will bring here to the committee.

Mr. GRAHAM. You have no difficulty in following the vein in Pennsylvania?

Mr. RYAN. I understand not. No. All we have done so far in our development is to follow the vein where it was exposed. We have gone in on the veins at times—have had it pinch out, yes, many times and on many veins.

Mr. RAKER. How long would you say the lessee would require for actual development—to bring his machinery on the ground, placing it, and making his drifts and getting ready to get out coal in considerable quantities without damage to his plant?

Mr. RYAN. Well, the first thing, as a practical proposition, I would say is to find out the real coal values. There has been no prospecting done on numerous veins and for that matter, extended acreage. The Cunningham group was supposed to have been prospected and experted by Mr. Storrs. He is an authority on coal mining. I am not speaking of what might be; I know the field. I have perfect faith in the Bering River coal field in spite of what has been said and what they have already found. The first thing I would suggest to the committee is that the prospective lessee should have a chance to prospect. You ask me if I consider 25 cents an acre unreasonable. No man would stand out against 25 cents a year, least of all the boomer or fake lessee.

Mr. GRAHAM. It is only $800.

Mr. RYAN. I mean the first year. The 25 cents an acre would be just, but I would like a bond attached to that. I would like to see the Government estop in some way or another this boom of wildcat leases that is sure to follow the publicity the coal values have gotten in the past years. These boom leases are only secured for stock sales, but they will damage Alaska.

The CHAIRMAN. You say you would like to have a bond for the performance of the lease so that wildcat concerns would be barred? That looks very feasible on the face of it. Still, at the same time, we revert back to the matter objected to a moment ago, that the man

ought to have the time to prospect. How would a bona fide bidder give a bond unless he knew something about what was there?

Mr. RYAN. Suppose I take an option to lease and to prospect 2,500 acres of land. I bring a survey to the Secretary of the Interior of the location—what ground it covers. He should say, "I am not going to tie that under option of a lease to you without some guaranty of good faith," and it is but right that he should ask me for a bond. I take it for granted the department would maintain men authorized to see such prospecting done in good faith. I do hope we will not have to come down to Washington on every little question if this bill passes. I hope there will be some official created and designated by the department who will have the say locally up to a certain point, at least. There will be a lot of questions to be settled.

Mr. LA FOLLETTE. Did I understand you to say in regard to this coal all through these fields, in its various units, that these veins run vertically?

Mr. RYAN. They vary.

Mr. LA FOLLETTE. They do not then run vertically, but the general trend is vertical, with the pitches at different angles.

Mr. RYAN. The general field pitches to the northwest.

Mr. RAKER. Mr. Ryan, your testimony has been confined practically to the Bering fields.

Mr. RYAN. Altogether. I have no personal knowledge of the others except the Lisburne and the fields near Nome. Now, as to the proposed reserves for the Government use—the Government does not want or use anthracite coal, so I suppose it would not reserve any acreage on Carbon Mountain—that is the high-class anthracite coal; and so far as the other coal beds are concerned the Navy made the statement that "they had made an investigation of it, and it does not come up to their standard as naval coal." They do not want it they say, and if the result of their investigations and decisions are to be taken into consideration, they do not want any of the Bering field. The Army only uses domestic coal, and very little at that. The coal in the center of the field is believed to be good coking coal, but is it coking coal or not? Talk to some great authority on coal like Mr. Carnegie, Mr. Frick, or Mr. Schwab, and they will tell you there is nothing in a laboratory test for coke; it has to go in the ovens before you can rely on your test. They will tell you that they never knew a laboratory test that was worth 5 cents. This is Mr. Frick's opinion and also Mr. Schwab's of the coke test, and I suppose they know whereof they speak. You have to go at it on a large scale and try it out in the ovens in order to produce the coke and get results.

Mr. GRAHAM. As to the anthracite coal, have you an opinion as to whether it should be worked in a single lease or whether a lease should embrace some bituminous and some anthracite with reference to the lay of the land?

Mr. RYAN. No; I have not given that a thought. This field [indicating on map] is in four sections, divided by creeks, creating openings from which it is possible to economically attack the different sections and for transportation purposes. The main line leads from Controller Bay and branches into each of these natural openings. The farthest east possible entrance of attack is Canyon Creek, which comes here [indicating] and divides the anthracite from the semi-

anthracite and bituminous coal here [indicating]. You can attack the Cunningham group from this point, and over here [indicating] the English company's group, on Shepherd Creek.

Mr. GRAHAM. It has been said here during the discussion that there has not been very much demand for anthracite coal on the Pacific coast. Suppose the demand was not sufficient to justify the possibilities of the anthracite coal land. Is it so situated there that the same group could take in some anthracite and some bituminous and work them under a common lease?

Mr. RYAN. I imagine so. You could take coal on both sides of Canyon Creek—anthracite coal on the west side of Canyon Creek and semianthracite and bituminous on the east side. The best anthracite coal on Carbon Mountain, I believe, lays over to the extreme eastward. It is not accessible at the present time for the cheap mining of coal and transportation.

Mr. RAKER. I imagine that the bill as it stands provides for a contiguous location, does it not?

Mr. RYAN. I imagine it does, from the reading of it here.

Mr. RAKER. That is your understanding, that all these leases are contiguous leases?

The CHAIRMAN. I do not know about that. You mean a single lease?

Mr. RAKER. Yes.

The CHAIRMAN. I rather assume so, although the Secretary has authorized and blocked out the territory in such form as he desires. That provision in the bill is that the Secretary is to block it out and offer it in such areas as he thinks advisable, not to exceed 160 acres, with the provision that he may offer it in smaller areas.

Mr. RAKER. What I wanted to know was whether the language was not such that the Secretary could not locate claims unless they were contiguous?

The CHAIRMAN. I think that perhaps that is true.

Mr. RYAN. There may be some other things that the bill may develop. I have tried to give you the practical side of it as I see it and as if I were coming to you to make a lease.

Mr. MCKENZIE. Mr. Chairman, I think it will be conceded that this is a most important matter. If this committee makes a mistake at this time it will be an almost fatal mistake. Congress has made three attempts so far to pass a leasing bill, and in each case the failure has been due to lack of information, to my mind at least, on the part of the committees. Now, we are going to attempt at this time to bring information before this committee so that it can report an intelligent bill. There are people now on their way from Alaska to appear before this committee. They will arrive the latter part of this week, or the first of next week, and we would like to have plenty of time. If this bill which the chairman has mentioned, the California bill, should come up it might be better for us to stand aside for a little while; but we want a full hearing, and I have one other suggestion I want to make, and that is this: I do not believe that Congress can adopt an intelligent bill unless they make that bill fit the ground. Now, it would be very desirable if we could take this committee out there and go over the coal fields on the ground. We can not do that, but we can do the next thing to that, perhaps.

The Bureau of Mines and Mining has a great many slides or views of those coal fields, the Matanuska and the Bering fields, as has also the Geological Survey Department, and they have some over here at this Alaska exhibit. I would suggest, if the committee will take an hour some time, to get Dr. Martin, of the Geological Department, who did the work in that field, and go over there and he will explain this matter thoroughly, and he will flash them on the canvas, so that you can get an idea of this work and this country which would very much aid you in the work.

The CHAIRMAN. We were invited this morning by Mr. McPherson to come over and view this, but is not this true: With reference to the details and with reference to the actual conditions, which we would necessarily be instructed upon, are not most of those things matters that would address themselves to the provisions, and not the lease, which is left to the Secretary, and had you better not educate him as to the thickness of the coal and the methods for mining it, and would that not be data that would help the Interior Department more than it would the committee?

Mr. MCKENZIE. I could not myself. I do not believe there is a man on earth who can construct a bill unless he has some ideas in regard to it. There are a lot of things there to be taken into consideration, and I have no doubt there have been matters discussed here in this committee which one glance at one of these pictures would clear up.

Mr. GRAHAM. Do you know of any provision in the bill which might be affected by a view of these lantern slides?

Mr. MCKENZIE. Yes, sir.

Mr. GRAHAM. And which is left to the Secretary?

Mr. MCKENZIE. The bill, of course, should provide for all these things, and about getting through and over the ground there in Alaska. It is a very rough, rugged country, and a bill that might suit Oklahoma or suit Pennsylvania or Illinois might be a total failure in Alaska. We have been held up for three years in this matter.

The CHAIRMAN. There is much in what you say, and, of course, it can always be truthfully said that the committee needs more light than it receives, but there is this danger which you should keep in mind: If we report this bill too late and drag along with these hearings you will not get any legislation this year and you will be hung up for another year, and then Congress and the Department will be subjected to the same criticism that we do not do anything and that we do not act at all. Had we better not all use speed and haste in getting you a leasing bill that will permit you people to open up this country, and is there not great danger if we prolong these hearings that nothing will be accomplished?

Mr. MCKENZIE. I am in sympathy with what you say. If we can make haste safely, we should do so, but we do not want to be in the condition that we were before after we got this bill out, when the other bills were before this committee, and have the whole matter tied up again.

The CHAIRMAN. But we must not delay these hearings too long, because it will be impossible to get the bill through if we do not act very shortly.

Mr. RAKER. How long will it take to get your exhibit together?

Mr. McKENZIE. It is all ready now.

Mr. RAKER. As for myself, I would like to see it.

Mr. McKENZIE. It is over in the Senate Office Building.

The CHAIRMAN. When did you say your friends will be here?

Mr. McKENZIE. They should be here Friday or Saturday.

The CHAIRMAN. How many are coming?

Mr. McKENZIE. I do not know who particularly are coming. I know one gentleman, Mr. MacDonald, who lives in Seattle, will be here.

Mr. GRAHAM. One of these groups of mines is named after him.

Mr. McKENZIE. Yes, sir. He is a man who opened a mine up there, and he is not coming here to fight for his title. He is coming here to try to get a lease under which he can work.

The CHAIRMAN. How much more about this does he know than yourself, Mr. Wickersham, Mr. Ryan, Mr. Brooks, and Dr. Holmes?

Mr. McKENZIE. About the practical working of a mine in that particular country up there he knows more than all of us combined.

Mr. LENROOT. Do you know whether he objects to certain provisions in the bill?

Mr. McKENZIE. I do not. His idea is to get a workable bill under which he can go to work and lease a piece of ground, and that is the first wish of all these people.

The CHAIRMAN. Mr. Graham suggests that we get as far toward closing the hearings as we can and go to work, section by section, on the bill with the understanding that Mr. McKenzie can bring Mr. MacDonald here and we will hear him. I think that would be the better plan, as he is on his way here for that purpose.

Mr. McKENZIE. Yes, sir.

Mr. RAKER. When will these views be ready? I would like to see them.

The CHAIRMAN. Before you came in, Judge, Mr. McPherson invited us to come over and take a look at them, and we tentatively agreed to finish the hearings as soon as we could, and then before we began on the section-by-section work to go over and see them.

At 1.20 p. m. the committee took a recess until 2.30 p. m. same day.

AFTER RECESS.

The committee reconvened pursuant to the taking of recess.

The CHAIRMAN. As Dr. Holmes desires to leave at a quarter to 4 we will hear him now, and then Mr. McKenzie can go on.

Dr. Holmes, please state your full name to the committee and your connection with the department and how long you have been familiar with the conditions in Alaska.

STATEMENT OF DR. J. A. HOLMES, DIRECTOR BUREAU OF MINES.

Dr. HOLMES. Joseph A. Holmes, Director Bureau of Mines. I have been with the department since 1905.

The CHAIRMAN. And what have you had to do with the Alaska coal fields and other coals, generally, Dr. Holmes?

Dr. HOLMES. I have been in charge, Mr. Chairman, of the Government investigation of coals, from the standpoint of the mining

and use of coal, since 1905, and I have been in half the coal mines in the United States, it seems like, when I count them up, and I have made investigations in every coal field in the United States.

In Alaska I spent the summer of 1911 in the examination of the Bering River and Matanuska coal fields. I also spent about four months of the summer and autumn of 1913 in the Matanuska and Tanana coal fields, and I have visited, in connection with this work, quite a number of other small coal outcrops in different parts of Alaska.

The CHAIRMAN. You were present, were you not, at some of the conferences when a good deal of this bill was drawn up?

Dr. HOLMES. Yes, sir.

The CHAIRMAN. You were present at the conferences and helped to draw it up, were you not?

Dr. HOLMES. Yes, sir.

The CHAIRMAN. You are therefore, I assume, familiar with all the provisions of the bill?

Dr. HOLMES. Yes, sir.

The CHAIRMAN. And will you now present your views on the bill for the benefit of the committee and make any comments you care to and any explanation you would like to make.

Dr. HOLMES. I would like to say, Mr. Chairman, in beginning, that it seems to me a wise system to adopt in Alaska, more than in any other portion of the country—I mean the leasing system—for this reason: Alaskan coal fields do not have the extensive, continuous beds of coal which we find under normal conditions in West Virginia, and Pennsylvania, and elsewhere. You gentlemen are aware of the fact that if you have a coal area the size of this table and you put a hole down in the four corners of it and strike coal you may feel fairly well satisfied that you have a good, continuous bed of coal under the entire area; but in Alaska the beds have been so folded and tilted and crushed in places that a man must invest a considerable portion of his capital in the original purchase of a coal area, which leaves him that much less capital for operating purposes. Under normal conditions in West Virginia or Pennsylvania that would not be so bad, for he would know just what he was going to be able to do with his remaining capital, but in Alaska the conditions are quite different.

A man might start in on a lease there and soon find that he has taken all the coal out of that ledge and be unable to get the contiguous ledge, and would then have to start in on another bed. So it is important, under those conditions, from the operators' standpoint, it is a decided advantage to be able to invest his entire capital in operating expenses, rather than in the original investment of the land. It is also advantageous in that it enables the Government to better safeguard the lives of the men and to prevent unnecessary waste, and I would like to make simply one remark in connection with that, Mr. Chairman: A large part of the opposition which I have found in talking not only with Members of Congress, but engneers and coal operators in different parts of the country, to Government supervision of any kind is based upon the friction which was inaugurated some years ago in the early days of the Forestry Service in the West. I do not regard that as a possibility under this administration or any other that may follow it, but as some of you

know, there has been more friction with reference to interference by the Forestry Service in mining operations in Colorado than in most all the other States combined. I had the honor of being a guest at a large meeting of mining men at Denver about a year and a half ago, presided over by Gov. Shafroth, who is now a Senator from that State, and I was commissioned by the Forestry Service to say to that meeting that if any of those men had any grievance against the Government in connection with the management of the forest reserves and in connection with mining, and they would present it, we would do our best to straighten it out.

When I said that I think there were a half dozen men rose at once, and I supposed I was going to hear all sorts of complaints, but on the contrary, one after another stated that there had been no friction in the past and that they had no grievances against the Forestry Serive of any kind; they stated that all their grievances had been remided, and there was not one submitted at that time, nor have I received from the Colorado miners a single grievance since. I did have one from a California miner, but that was promptly attended to and promptly corrected by the Forestry Service, and we have had very few from other States. I take a great deal of pleasure in saying that the Bureau of Mines has not been of as much service in that direction as I thought it might be.

Mr. McKENZIE. I would like to ask Dr. Holmes if that request, to submit their grievances or complaints against the Forestry Service, was made of the mining interests in Alaska?

Dr. HOLMES. Yes, sir; I have made that request in a number of different places. We have had very few complaints from Alaska. I have been taking up each individual complaint with the Forestry Service, and I think each one is being straightened out. I propose to continue that sort of intermediary work at every opportunity, because I certainly feel that I should stand up for the mining industiries against every sort of encroachment.

Passing from that, Mr. Chairman, to the provisions of this bill itself. There are one or two suggestions which it seems to me might still be made in the interest of operating conditions with reference to the surveys. I notice in section 1, as I remember, that from the original draft of the bill, that surveys are required as a preliminary. Now, with reference to the two fields where we have certain maps in existence, I would make three suggestions: First, in my judgment, the country in the Bering River field particularly, does not lend itself to the ordinary Land Office rectangular maps. I believe if those maps are insisted upon as a final guide, when a man wants to lease a considerable amount of ground you will have to omit a considerable area of ground which he ought to have and which will not fit in any other lease, and which can only be worked efficiently from his lease. If anyone will look at the Bering River map I think he will at once see that this is the case.

The CHAIRMAN. You think it would be advisable rather than to draw a rectangular map we should simply require some kind of geological survey?

Dr. HOLMES. I think, Mr. Chairman, that for preliminary work the topographic maps which exist to-day could be used, and that upon them we can base information which is necessary for outlining the

prospecting area or even the leasing areas. We have to fit the mountain ranges and the geological formation in order to get the best working areas.

My point of view is this: Alaskan development has been held back for so long a time that I am anxious, and certainly I know you gentlemen are, to see everything done now to facilitate development. Assuming that the railroad bill becomes a law and action is taken by the President with the utmost facility, and that operations could be inaugurated within a year's time and the railroad could reach the Matanuska and Bering River regions, if that were possible, that amount of time would be necessary by coal companies, they would have to know that long in advance, where and how to do this prospecting and to complete their preparations for mining operations, so that by the time the railroad was completed he would be able to begin mining. Therefore, if we hold back a year for the surveys before we can allow the areas to be leased we will be holding back the coal mining development just that much.

The CHAIRMAN. I believe it is in the record now, I think by the Commissioner himself, or it was stated by somebody from his office, that probably not one year would be required to make the rectangular surveys, but from two to four years. Wasn't that the statement?

Mr. LENROOT. Not less than two years.

The CHAIRMAN. Yes; as to the Bering River field, two years, and about the same time to survey the Matanuska field.

Dr. HOLMES. My experience in land surveying, Mr. Chairman, was running boundaries so many chains north 20 degrees, and so many degrees east, regardless of the rectangular system. I have talked this matter over with the Commissioner of the General Land Office, and with the man in his office, who is in charge of these surveys.

The CHAIRMAN. You think that in the interest of economy of time you have data in the Geological Survey, in your topographic maps, that would enable you to prepare blocks and tracts suitable for leasing of coal lands, without waiting for the rectangular survey?

Dr. HOLMES. I do.

The CHAIRMAN. And you think it could be done without any additional field work at all; is that your idea?

Dr. HOLMES. That is my idea; yes, sir.

The CHAIRMAN. Then, doubtless section 1 of this bill ought to be modified to at least make it possible to recognize that data.

Dr. HOLMES. Yes, sir.

The other suggestion which I had in mind was, and it may or may not be an expedient one, that there exist to-day rectangular maps made from private surveys covering the Bering River field quite thoroughly; it occurred to me, whether or not it would be expedient at this time, to authorize the department to make use of those surveys, and at some subsequent date have the Secretary of the Interior compensate the parties making the surveys; I don't mean the whole expense of making the original surveys, for that, in some cases, would be far greater than it would now cost the General Land Office to do similar work, but to compensate them in proportion to what the information might be worth to the Government.

The CHAIRMAN. You think something of that kind ought to be in this act?

Dr. HOLMES. In this or subsequent legislation. I have advised against burdening this act with anything that might stir up opposition to the general proposition. Things we have proposed for two or three years past have sometimes aroused so much opposition that important legislation has been defeated, and I have therefore urged that anything of that kind be left out of this bill, so it may go through with the utmost facility.

The CHAIRMAN. So the suggestion you now make would not necessarily have to be considered in this bill?

Dr. HOLMES. I think not, Mr. Chairman.

In section 2 of the bill I think there has been an omission which was not intentional, but at any rate I would suggest a change. It says that after the execution of the surveys provided for in this act the President shall designate and reserve from use, location, sale, lease, or disposition not exceeding 5,120 acres of coal-bearing land in the Bering River field, and not exceeding 7,680 acres in the Matanuska field. Now, if the railroad is to be built, going from the Matanuska field through the Tanana coal field and the Fairbanks region, there certainly ought to be some reservations, not for the Army or Navy, but for the use of mining interests in connection with the operation of the Tanana coal fields. If you have seen the map showing the distribution of the coal fields in Alaska you will notice on the Bering Sea what is called the Corwin mine, and the Cape Lisbon field. I am not sure whether they have given me the right map, but here is a map [indicating] which shows the geological formations in that region. The coal from what I call the Cape Lisbon field is of fairly good quality, much better than the lignite coal found in the Corwin belt, both of which face the Bering Sea. That coal along there is extremely useful to the public in many ways, for example, as indicated in one of the pictures here. The revenue cutters every year go up to Point Barrow to carry relief to the fishermen and others there, and not infrequently other ships in passing need coal badly at that point. At the present time they go there and take the coal, as it belongs to the public, as it were. If there could be a small Government reservation there so this coal would always be available for such public use I think it would be well.

The CHAIRMAN. You suggest a third reservation in the Tanana field, and a fourth in the Lisbon field or the Bering Strait country; is that your idea?

Dr. HOLMES. I would suggest this reading, Mr. Chairman: Change it just as I have it marked here [indicating], "reserve from use, location, sale, lease, or disposition not exceeding 7,680 acres of coal-bearing land in the Matanuska field, and not exceeding 5,120 acres of coal-bearing lands, each, in the Bering River and other coal fields"; so, wherever the Government might want to run or operate a railroad, there would be a reservation of that kind.

The CHAIRMAN. Some one here from the Geological Survey designated a great number of fields—I have forgotten how many—where they thought it necessary to make reservations of that sort in these low-grade lignite fields as well as in the others.

Dr. HOLMES. I don't believe they would ever be made——

The CHAIRMAN. If we authorize a withdrawal or reservation of that sort, they would be made, would they not?

Dr. HOLMES. You only authorize the President to do so in case of public need.

The CHAIRMAN. But the usual assumption is that authority given is authority used, and I was wondering if you thought it would be necessary in those fields—as to the higher-grade fields.

Dr. HOLMES. I only suggested it, not because I thought it would be needed, but because a situation of this kind we can easily anticipate: If the railroad is decided upon and it goes through a certain coal field where some private party had gotten a lease on the entire area, it would be entirely dependent in that case on whatever the individual should charge, and the Government would lose the right to get the coal for its own use. However, my main point was to provide for the Tanana and Cape Lisbon regions.

The CHAIRMAN. Your suggestion would be that a reservation be made in each one of those fields as the one in the Bering River?

Dr. HOLMES. Yes, sir.

The CHAIRMAN. The Tanana field is a lignite field, is it not?

Dr. HOLMES. Yes, sir.

The CHAIRMAN. And what kind of coal is there in the Lisbon field?

Dr. HOLMES. It has two kinds of coal; the one most used now is a high-grade lignite, almost half way between the lignite and bituminous coal. Cape Lisbon is the ordinary bituminous coal, belonging to the same geologic formation as West Virginia bituminous coal.

Mr. LENROOT. The reservation is mandatory on the part of the President as to those. Do you think it would be well to make it discretionary?

Dr. HOLMES. I think it would.

The CHAIRMAN. What do you think of the size of the reservations in the Bering River and the Matanuska fields—the two main fields?

Dr. HOLMES. I think these would be satisfactory.

The CHAIRMAN. That the area provided in the bill would be satisfactory?

Dr. HOLMES. Yes, sir; it seems to me so.

In section 4, Mr. Chairman, at the end of that section, one of the coal operators to whom I submitted this bill for consideration and suggestion has called attention to the fact that under the wording as it now exists—or at least it was his interpretation—an operator would not be able to take another lease until he had worked out the coal within that entire area, and he might approach the end of his operations without knowing whether he could ge another lease or not, and thereby might be forced to move his machinery to an entirely different field of operations, and he asked me whether or not it would be advisable to add, after the word "acres," in line 19, page 3, the three words "of unmined land." It seemed to me a reasonable suggestion.

The CHAIRMAN. That is a pretty severe limitation, is it not, Doctor? Wouldn't there be danger of that opening the door for one concern to go up there and take up one after another of these areas——

Dr. HOLMES. It is at present entirely unmined. After a man had mined out 500 acres of such a reservation, and other parties had not taken up the land immediately adjacent to him, that the Secretary

of the Interior would be authorized to lease to him 500 additional acres of unmined land.

The CHAIRMAN. And so be able to keep the total area up to the 2,560 acres all the time. Is that the idea?

Dr. HOLMES. Yes, sir; he couldn't take a second lease until 20 or 25 years after he had begun——

The CHAIRMAN. Would it not be better to make it perfectly plain and say that as fast as he mined and concluded his operations on a certain block or area, of 640 acres, say, it would be in order for him to apply for an additional 640 acres of contiguous unreserved unleased lands?

Dr. HOLMES. I think it would be quite advisable, so there would be no misunderstanding about it.

The CHAIRMAN. Do you think it would be necessary to have it contiguous?

Dr. HOLMES. I think that it would be.

The CHAIRMAN. And subject to the same trackage and machinery?

Dr. HOLMES. Yes, sir.

Mr. RAKER. In other words, he would be able to keep in operation at least 2,560 acres?

Dr. HOLMES. Yes, sir.

The CHAIRMAN. There are some pretty serious things to consider in connection with the advisability of that. Some big coal company might first secure a lease on 2,560 acres; supposing they did, then as fast as they were able to mine out, we will say, one unit of 640 acres, allow them to always keep 2,560 acres ahead of them. I have not had time to think out what the result might be. It might have a very far-reaching effect.

Dr. HOLMES. With your permission, Mr. Ferris, I will cooperate with Mr. Finney in drafting some provision to safeguard the public interest in that respect, allowing a man to take up additional land before he at least quite used up all that he had.

The CHAIRMAN. Perhaps a year in advance of the termination of his lease.

Dr. HOLMES. Something of that sort.

Two other things occurred to me which are not provided for in the bill in perhaps as clear a way as they might be. Now, from the standpoint of the operator in the Alaska coal fields I appreciate that certain mining conditions are going to be necessary for successful operation which a man would not need in most eastern coal fields: In the first place, the question of timber, which is very scarce and inferior in quality. I think we ought to have some provision in this bill which gives the mine operator first call on the timber near the mines. There ought to be proper cooperation between the Interior Department and the Forestry Service to safeguard the timber as far as possible for the necessary mining operations.

The CHAIRMAN. Do you have reference to timber outside and apart from the area leased?

Dr. HOLMES. Yes, sir.

The CHAIRMAN. You think some provision ought to be in this bill which would bring about a working cooperation between the Forestry Service and the Interior Department so the miner could obtain the necessary timber for cribbing purposes and other purposes, having the right to go upon the forest reserves or other lands of the

Federal Government and have the first call or first right to appropriate and use the timber, is that your idea?

Dr. HOLMES. That is the idea; yes, sir.

The CHAIRMAN. It might be well for you and Mr. Finney to cooperate on that matter, too, and get in touch with the Agricultural Department and work out an amendment or proviso to be presented to the committee.

Dr. HOLMES. Yes, sir; we will do so.

Mr. MCKENZIE. Doctor, would it not be better, in view of the fact that the Interior Department or some branch of it may have charge of these mines, that they should have charge of that timber? Under the system proposed there would be two branches of the Government having charge of the matter, thus requiring two sets of officers there. The Bureau of Mines would understand the uses of the timber better than the Forestry Service.

The CHAIRMAN. They both have officers there now, haven't they?

Dr. HOLMES. Yes, sir.

Mr. MCKENZIE. I think it might cause some trouble.

Dr. HOLMES. We will take care of that. The cooperation was to be in drawing up a satisfactory measure, not in the administration of the bill.

The CHAIRMAN. Is it your idea that it should be in this bill or in a separate bill?

Dr. HOLMES. Suppose we see if we can draw up something and present it to the committee later.

I was going to say that I have seen, as Mr. Kent and Judge Raker have probably seen in California, places where timber had to be shipped for long distances to be prepared for commercial purposes, and then the miner had to bring it back over long distances for use in the operation of mines.

The CHAIRMAN. There is a provision in law now which authorizes the residents up there to go upon the forest reserves and buy a certain amount of timber. I am not sure whether this would include lessees, but the law now authorizes residents of Alaska to purchase a certain quantity of timber, and I am not sure but they can take a certain amount without giving any compensation at all.

Dr. HOLMES. We will act on that suggestion, Mr. Chairman.

In two other ways there ought to be possibility of cooperation, and I do not see that there is anything in this bill which will forbid it. For efficient operation there should be certain cooperation between the mining companies operating in these fields. I have found that a considerable part of the coal will have to go through a washery before it could be considered high-grade coal. Much of the criticism of the sample of Alaska coal tested by the Navy Department grew out of the fact that it was collected from localities where there was no opportunity for screening or washing; all the work was done by hand, just for the purpose of getting that sample, as the necessary facilities were all lost with the loss of our provisions and other supplies during the great storm. But there ought to be, unless section 7 grants the necessary authority for that, an opportunity for two or three or more mining companies to cooperate in providing a washery for their common use. One might be erected on a convenient stream, where an ample supply of water would be available. It should not be necessary for each company to go to the expense of erecting a

washery, but two or more companies could combine and provide a washery for washing their coal.

The CHAIRMAN. There seems to be nothing in section 7 to prevent that.

Mr. RAKER. Ought not some cooperation be permitted in the matter of railroads and tunnels and other appliances like that so they would not have to construct more than one tunnel?

Dr. HOLMES. Yes, sir; but there is less opportunity for that, Judge Raker, in coal-mining than in metal-mining operations; nevertheless, we will consider that suggestion, with your permission, Mr. Chairman.

Mr. SINNOTT. The section (7) does not provide for the use of the surveys of one mine by another or for the machinery of one mine by another.

Dr. HOLMES. No, sir; the point I had in mind was that if the washery could be located, not on one of the leases, but on a stream near by, where the sidetracks from several different mines would converge.

The CHAIRMAN. It was called to the attention of the committee by Mr. Kent, I believe, that in some place in Canada it was necessary to use the tunnels of other mines, and I take it inasmuch as you have in your mind the matter of a joint washery, or other process of cleansing the coal, you might at the same time consider that phase of it, too.

Dr. HOLMES. We will do so.

Another way in which cooperation may be necessary is this: It has been found successful in a portion of Germany, Belgium, and France during the past few years to use a sand filling in mines to a considerable extent, so as to avoid subsidence. They have been able to mine right under the great Krupp works, and they have received permission from the German Government to mine under the Rhine River, subsidence being prevented by filling up with sand. This method originated here in Pennsylvania, but it has been developed very much more extensively in Europe. I anticipate that in the Bering River region a suitable supply of sand might be dredged up by one company and sold to the different companies, where it would have to be carried only a few miles. It should be used very successfully in those mines where the beds of coal stand almost on end. I think in this way that a good deal of timber can be saved and the expense of operation materially reduced. I will see if we can not provide for some cooperation in that respect.

Mr. FERGUSSON. That could be operated by an independent company, could it not?

Dr. HOLMES. It could.

Mr. FERGUSSON. But the independent company would not do it with the idea of cooperating with the other companies.

Dr. HOLMES. No, sir; they would probably do it with the idea of getting rich at the expense of all the mining companies.

I don't believe I have any other suggestions, Mr. Chairman.

The CHAIRMAN. There was another question I wanted to ask. Mr. Mondell has given the Alaskan coal bill quite a lot of consideration, and has introduced some bills on the subject; he has one now, and he was at one time chairman of this committee. He has suggested that he didn't think that this bill contained a provision drastic enough against monopoly; there seemed to be no paragraph which,

in his opinion, would ward off monopoly as to the sale and making of contracts of sale for the products of these mines. I wanted to get your judgment on that proposition. He was of the opinion that operators would get together and provide or agree that the sale should be made in a certain way and to certain parties, and so be able to control both ends of the string, so to speak. I wanted to get your ideas on this point and see if you thought we had properly safeguarded that feature of it.

Mr. FERGUSSON. Would that be necessary in this bill, or could we provide for that separately?

The CHAIRMAN. Well, I think if we are lame on that proposition that we ought to put it right in here. I had thought this was fully covered by the provisions of sections 7 and 8, which very rigidly provide that there shall be no interlocking directorates, etc., and make it a felony if any are discovered; but I do not myself find any provision which has anything to do with the sale of the product.

Mr. GRAHAM. There is the right of the Government to develop its reservation; that is one of the special reasons for that reservation.

The CHAIRMAN. I have wondered if we could get at the proposition as to whom the product should be sold. Section 7 provides—

That any person who shall purchase, acquire, or hold any interest in two or more such leases, and any person who shall knowingly sell or transfer to one disqualified to purchase or, except as in this act specifically provided, acquire any such interest shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment for not more than three years and by a fine not exceeding $1,000. For all the purposes of this act stock in a corporation owning or holding such a lease shall be deemed an interest in the same.

Then it goes ahead, in section 8, and provides about the directors, trustees, and agents——

Mr. GRAHAM. But any one of those could arrive at a gentleman's agreement as to the selling price of the coal.

The CHAIRMAN. Yes; that is true. Mr. Mondell's suggestion provided for regulation, even in addition to the provisions stated in section 2 of this bill. Personally I do not think we need much more than to guard against the interlocking feature and the monopolistic features, but Mr. Mondell, in the bill that he introduced in the House on January 14 of this year, it being No. 11616, on page 5, section 6, has a provision like this. It was talked about a good deal in the committee, Dr. Holmes. (Reading:)

That the lessee shall not during the lifetime of the lease receive or hold, directly or indirectly, any other lease under the provisions of this act or interest therein—

That is like ours. Then follows:

That he shall not monopolize, in whole or in part, the trade in coal.

We do not have that specific declaration; we do have a clause in our bill, section 2, which makes it possible for the President, when, in his opinion, the coal is required for Government works or in the construction and operation of Government railroads, or is required by the Navy, or is necessary for national protection or for relief from oppressive conditions brought about through the monopoly of coal, to have deposits in these reserved areas mined under his direction. Whether or not Mr. Mondell's provision is superior to ours or ours is superior to his, I do not know.

Mr. LENROOT. Suppose we have 12 leases in the Bering River field, and we have these prohibitions, what is to hinder those 12 gentlemen from getting together and organizing a selling corporation that will take the entire product of the 12 leases; wouldn't you have there a complete monopoly of the trade, just as if you did not have a word in this bill about it?

The CHAIRMAN. And one concern would take all the coal?

Mr. LENROOT. These gentlemen would form a separate corporation that would buy the coal from themselves, of course. There you would have a complete monopoly.

Mr. GRAHAM. They could have a gentlemen's agreement as to who would market the coal, and at what price they would all sell out.

The CHAIRMAN. What do you think of that, Dr. Holmes? Have you thought of that possibility?

Dr. HOLMES. Yes, sir; I have wrestled with that particular phase of this problem, and I have talked the question over with nearly a hundred coal operators and other people in different parts of the country, and my conclusion is that the public is not quite ready to go into the price-fixing business. My prediction is that within 10 years or less the coal mined, not only in Alaska, but here in the United States, whether soft or anthracite coal, will be sold under conditions which will be prescribed by a commission which will have the right to do what the Interstate Commerce Commission does now in the matter of railway rates—that it shall not be sold above a certain price.

Mr. FERGUSSON. That would apply to Alaska, too?

Dr. HOLMES. Yes, sir; public opinion is getting more and more ready for it, and the coal operators are well aware of it.

The CHAIRMAN. Irrespective of that policy, what do you think of the statement just made by Mr. Lenroot? What do you think about the possibility of those 12 men putting their heads together and forming a gentlemen's agreement, or organizing a selling corporation that will take the entire product of the 12 leases, thus dealing oppressively with the public. Do you think such a thing is possible?

Dr. HOLMES. I think it is possible, Mr. Chairman; but I also think it is certain there would soon be an act of Congress absolutely forbidding it should they attempt to do that.

The CHAIRMAN. If you think there is a possibility of that, ought we not to put something in this legislation to prevent that being done?

Dr. HOLMES. Yes, sir.

The CHAIRMAN. Now, Mr. Mondell, referring to his bill again, it will be remembered that, while the chairman was one of those who helped to report this bill and he thought it was a good bill, the chairman was also one of those who was thrown out the window with this bill, as it were; but, as I say, Mr. Mondell thought we should exact 50 cents a ton as a royalty on coal; many members were of the opinion that the minimum of 50 cents a ton royalty should be collected; but if we had adopted that no one would ever have mined a ton of coal in Alaska. Mr. Lenroot there was one of those who voted against the bill on account of that provision.

Mr. LENROOT. I don't want to let the record stand that way, Mr. Chairman, because there were other grounds on which I opposed the

bill; there were a number of propositions in the bill which caused my opposition, but that was one of the things.

The CHAIRMAN. Let me read a little further here, from section 6, page 5, of House bill 11616, which it is contended by Mr. Mondell should go in this bill:

That he will at all times sell the coal extracted from the leased premises at just, fair, and reasonable rates, without the giving of rebates or drawbacks and without discrimination in price or otherwise, as between persons or places, for a like product delivered under similar terms and conditions.

Mr. GRAHAM. Does he suggest any way of determining the facts in the case?

The CHAIRMAN. Well, I suppose that would be up to the courts, or the Secretary might declare such a state of affairs to exist. What do you think of that, Dr. Holmes? Do you think a provision of that kind could be incorporated here? Would it be a wholesome provision to put in the bill?

Dr. HOLMES. I think it would be wholesome; yes, sir. When the bill was being drawn I advised against it, because I did not feel that public opinion was quite ready for that step. And when I say public opinion I mean not only public opinion as represented by the people generally, but opinion of those who are going to mine the coal.

The CHAIRMAN. Do you think it would have the effect of defeating the purposes of this bill?

Dr. HOLMES. I do, for the next year or two; I don't think the men who are to mine the coal would feel sufficiently encouraged to take a lease under those conditions.

The CHAIRMAN. You think it might frighten off operators?

Dr. HOLMES. Yes; I feel that it would frighten off operators who thought of taking up leases; but without that provision I believe we would find men wise enough to undertake to mine the coal up there and deal fairly with the public. They could feel absolutely sure that if they dealt unjustly with the public within 12 months' time there would be an act to remedy that situation.

The CHAIRMAN. Now, I am pursuing this matter in absolutely good faith, and have no interest here except to put the thing through in the best possible way; but, what you say being true, ought we not to put something in here to cover that situation?

Dr. HOLMES. The fact that leases had been taken out under this bill would not prevent Congress from passing supplementary legislation forbidding a combination in connection with the selling of the product and providing, furthermore, that the Interstate Commerce Commission, or some other commission, should see to it that reasonable, just, and fair prices were charged.

The CHAIRMAN. Still, if a contract had been made between an operator and the Government, I scarcely think it would be among the powers of Congress to go in and modify a preexisting contract; and if you thought there was danger of that trouble at all, even if it was simply in the realm of possibility, I personally thing there should be some amendment or provision of some sort in this bill, having in mind, of course, that we do not want to do a silly thing by passing legislation that no one will ever touch. The good friends of Alaska are here trying to get some relief, but they don't want any legislation passed that no one will touch. I have been thrown down before

on bills, and can be again without having my personal feelings wounded very much, because I am doing with this bill as with any other bill, only what I think is right. But getting right back to the proposition again: If you think there is any possibility, as the head of the Bureau of Mines, of those lessees getting together and organizing a corporation which will endeavor to control the output entirely and therefore make it hard for the people who want to use Alaska coal, I think we should now take some action to prevent that.

Mr. GRAHAM. We could have some provision by which the lease would be forfeited if such things as that were done. Wouldn't that be a sufficient preventive?

Mr. FERGUSSON. That would still run counter to the doctor's contention that we should not put any burdensome conditions in the bill.

Mr. GRAHAM. No; I don't mean any unnecessary provisions in this law which would deter people from leasing the lands, but provide that the man who leases coal lands must start in on the theory that he will have to be fair and square, and if he starts in on that theory he will have no fear of a provision that will forfeit his lease if he should become dishonest.

The CHAIRMAN. The Government has met that situation in this way: They don't fix the price, but they have granted franchises with the reservation that the Government shall have the right to interfere and fix prices whenever the privileges granted the corporation were found to be abused.

Dr. HOLMES. You could do that, if you have any doubt about the right of Congress to interfere with contracts made under the present provisions.

The CHAIRMAN. I do have doubt about that.

Mr. LENROOT. I do not, so far as general power to regulate prices is concerned; but general power, irrespective of the ownership of the land, or leasing——

The CHAIRMAN. Do I understand you to say that in the face of a preexisting contract made and entered into Congress could then go in and sweep that aside?

Mr. LENROOT. Not at all; we should have the same power over the——

Mr. FERGUSSON. Just the same right as we have to pass a general law now.

Dr. HOLMES. You may recall that, in connection with the Government leasing of lead properties, the Supreme Court decided that the Government should go so far as to regulate the price of the product.

The CHAIRMAN. Let me ask you again, Doctor—this thing seems of especial importance to me—if we should pass this bill without any antimonopoly provision, could we not do as the German Government has done, and reserve specifically in the lease the right, in the event of monopolistic control of the price of the product, of the Government to fix prices, and thus make it certain?

Dr. HOLMES. Yes, sir.

The CHAIRMAN. And would that of necessity scare off operators?

Dr. HOLMES. I do not believe it would. If they did not deal fairly with the public they, in turn, would be dealt with.

The CHAIRMAN. I believe I am voicing the views of the committee on this proposition, and would like to have you take H. R. 11616 with you, Doctor—that is the Mondell bill we have been referring

to. Look at section 6, page 5, and see if an amendment to our bill can not be devised that will reach that proposition.

Dr. HOLMES. All right, sir.

Mr. LENROOT. Another suggestion I wanted to make, Doctor, leading partially to the same result—as to whether section 7 might not be further modified so as to extend the prohibitions and penalties to any agreement between lessees as to fixing the price, and to any interest of a lessee in a corporation selling the coal?

The CHAIRMAN. Yes; and that provision where we are reserving the rights of preexisting contracts; those are two big questions in this bill that should be carefully considered.

Dr. HOLMES. I will be glad to do that, Mr. Chairman.

Mr. RAKER. Let him also take up the question in section 11 and provide that the Secretary of the Interior may have the right to grant or use such easements over any leases and to extend the right of way for all purposes for the adjoining location.

The CHAIRMAN. Was there anything further you cared to add, Dr. Holmes?

Dr. HOLMES. No, sir.

The CHAIRMAN. When can we have you and Mr. Finney back with us for the committee to receive the benefit of your combined judgment on some of these suggestions that have been made here?

Dr. HOLMES. Any time you suggest, Mr. Chairman.

The CHAIRMAN. By to-morrow?

Dr. HOLMES. I think so.

The CHAIRMAN. Has any member of the committee any questions they desire to ask Dr. Holmes. If not, we thank you very much, Dr. Holmes.

Mr. LENROOT. I had one other question, Mr. Chairman. Mr. Mondell raised the question about the contemplated competitive bidding, provided for in section 3. I believe the chairman's idea was that was only for a bonus, and that the Secretary had the right to fix the amount in the lease. That seemed to be open to some difference of opinion.

Mr. JOHNSON. There was another question raised by Mr. Mondell with reference to the right of the coal lessee to go upon the land and prospect for some period of time before finally closing the lease. It occurred to me as though there might be something in that, as a lessee might not be thoroughly satisfied as to the condition of the land. If he should have a license, under certain terms, to go on the land and prospect, say for a year, or some definite time, it might be better, as he would then be advised and able to make an equitable bid. I would like to ask the doctor what opinion he had on that?

Dr. HOLMES. I think that is not a bad thing to put in any leasing bill. In the Bering River region a large amount of prospecting has already been done, and it would not take a man long to decide what he would do there, and in the Matanuska region, too; for the principal areas I think such a provision should be so drawn as to require him to decide within 10 days; he can do it within that time, and it won't delay the actual development.

Mr. JOHNSON. Of course there would be nothing to prevent him going on the ground and inspecting it for any period of time.

Dr. HOLMES. No, sir.

Mr. RAKER. It has been stated that those coal fields up there are somewhat broken up by canyon, hills, etc., and under section 3 of this bill, as I understand it, the leasing block or tract of 40 or up to 2,560 acres must be in a piece by itself. From your knowledge of that field, Doctor, can you conceive that it would be advisable to permit the Secretary of the Interior to give a man a thousand acres in one place and the balance a half mile or 2 miles away?

Dr. HOLMES. Yes, sir; I think that would be advisable, provided the Secretary has the discretion——

The CHAIRMAN. Under the bill he has no discretion.

Dr. HOLMES. I was under the impression that he had.

The CHAIRMAN. No; it says blocks or tracts of 40 acres each and in such form as in the opinion of the Secretary will permit the most economical mining of the coal in such blocks, but in no case exceeding 2,560 acres in any one leasing block or tract. That would make it all contiguous, would it not? Would it be better if the Secretary had some discretion in the matter, because of the peculiar location of the land?

Dr. HOLMES. That could be easily remedied in line 22 by saying "the aggregate of which shall not exceed" that amount. A man might know there were three particularly promising outcrops in the field and he might claim the right to take in each one and thereby have the strategic advantage of the entire field for himself. That would have to be safeguarded by the Secretary, if he had that authority; but with that proposition safeguarded a man might take part of his area in the Bering River region or in the Tanana coal field. If you gentlemen desire me to do so I will go over the bill carefully with that point in view.

The CHAIRMAN. I think it will be very desirable for you to do so, Doctor.

The CHAIRMAN. Dr. Holmes very kindly prepared an abstract of all the bills introduced on the subject of opening coal lands in Alaska during the past series of years. It is thought this abstract has sufficient value to be printed in the record. Therefore, without objection, the same will appear at this point. It is as follows:

Coal land leasing bills introduced in Congress.

Bill No.	Congress and session.	Author.	Subject in brief.	Term in years.	Area in acres.	Rent per acre.	Royalty per ton.	Preferential right to renewal.
Memorandum..	61st.....	Secretary Ballinger....	Lease of coal lands, United States and Alaska.	30	2,560	10 cents; $1 at end of fifth year and after.	15 cents.....	No; but can be renewed for 10-year periods.
H. R. 23701 [1]...	61st, 2d....	Gronna.....	.....do.....	30	2,560	.....do.....	Discretionary.....	No; but lease can be renewed for 10 years by Secretary.
S. 5487.....	...do.....	Nelson.....	.....do.....	.....	.....	.....	Same as Secretary's memorandum of bill as above.	Same as Secretary's memorandum of bill as above.
S. 6707.....	...do.....	Beveridge.....	Lease of coal lands in Alaska.	30	2,560	Discretion of Secretary..	Discretion of Secretary..	No.
H. R. 32080....	61st, 3d....	Mondell.....	.....do.....	30	3,200	25 cents; $1; $4 third and succeeding years.	0.3 cent per ton.....	Yes; 20 years.
S. 9955.....	...do.....	Nelson.....	.....do.....	30	3,200	50 cents; $4 fourth and succeeding years.	5 cents minimum.....	No; Secretary may renew for 10 years.
H. R. 13115....	62d, 1st....	Robinson.....	.....do.....	30	5,120	25 cents; $1 for third and succeeding years.	1 cent low grade; 3 cents high grade as minimum.	No; but Secretary may renew.
S. 1583.....	...do.....	Gronna.....	Lease of coal lands in United States or Alaska.	.....	.....	.....	Same as H. R. 23701.....	Same as H. R. 23701.
S. 2860.....	...do.....	La Follette.....	Reserving coal, oil, gas, asphaltum, and providing for leasing of lands containing.	30	3,200	10 cents minimum.....	8 cents minimum.....	No.
S. 3124.....	...do.....	Works.....	Lease of coal lands in Alaska.	.....	.....	.....	Same as H. R. 13113.....	Same as H. R. 13113.
H. R. 24667....	62d, 2d....	Booher.....	Provide naval coal supply and lease of coal lands in Alaska.	30	3,120	25 cents; $1 for sixth and succeeding years.	5 per cent of value of coal as minimum.	Yes; 20 years.
H. R. 25749....	...do.....	.....do.....	.....do.....	30	3,120	25 cents; $1 for fifth and succeeding years.	3 per cent of value of coal as minimum.	Do.
S. 6692.....	...do.....	Smoot.....	.....do.....	.....	.....	.....	.....	Same as H. R. 24667.
S. 7030.....	...do.....	.....do.....	.....do.....	30	3,200	25 cents; $1 for sixth and succeeding years.	2 per cent to 10 per cent..	Yes; 20 years.
H. R. 7085.....	63d, 1st....	Bryan.....	Construction of railroad; establishment of a coal reserve.	50	2,560	To be fixed by President.	None.....	None.

[1] Same as S. 5487 in most respects.

Coal land leasing bills introduced in Congress—Continued.

Bill No.	Congress and session.	Author.	Subject in brief.	Term in years.	Area in acres.	Rent per acre.	Royalty per ton.	Preferential right to renewal.
S. 473	63d, 1st	Gronna	Lease of coal lands in United States and Alaska.				Same as bills by same author, S. 1583 and H. R. 23701.	Same as bills by same author, S. 1583 and H. R. 23701.
S. 1325	do	Crawford	do	25	2,560	5 per cent of classified price.	½ cent to 5 cents per ton	Yes; 25 years.
S. 2714	do	Poindexter	Construction of railroad; establishment of a coal reserve.					Same as H. R. 7081.

Bill No.	Prospecting license.	Domestic location.	Assignment prohibited without consent.	Right to remove fixtures.	Easements.	Rentals credited against royalties for same year.	Provision fixing selling price of coal.	Proceeds credited to Alaska fund.
Memorandum	Yes; 12 to 24 months; 5,120 acres; 10 cents per acre.	Yes; 40 acres; 5-years; terms discretionary.	Yes	Yes; such as not deemed necessary to retain succeeding lessee to pay for.	Lessee given right to such as Secretary finds necessary.	Yes	Yes; to be inserted in lease subject to change.	No.
H. R. 23701 [1]	do	Yes; 40 acres; 5-year terms; terms discretionary.	Yes	do	do	Yes	do	No.
S. 5487	Same as Secretary's memorandum of bill as above.	Same as Secretary's memorandum of bill as above.						
S. 6707	No	No	Yes	Not stated	No	No	No	No.
H. R. 32080	Yes; 3 years; 3,200 acres; 25 cents to $1 per acre.	Yes; 160 acres; 10 years; terms same as lease.	Yes	Yes; except as necessary for preservation of mine.	No	No	Lease to provide; should be sold at fair and reasonable prices.	Yes; three-fourths.
S. 9955	Yes; 2 years; 2,560 acres; 25 to 50 cents per acre.	Yes; 40 acres; 10 years; terms as for lease.	Yes	No; court to decree disposition in case of forfeiture.	Yes; after land withdrawn by Secretary.	Yes	Lease to provide; should be sold at fair and reasonable prices. Under jurisdiction of Interstate Commerce Commission.	Do.

H. R. 13115	Yes; 2 years; 5,120 acres; 10 to 25 cents per acre; 50 cents per acre if renewed.	do	Yes	Yes; such as Secretary decides can be removed without injury to mine.	Yes; under regulations of Secretary.	Yes	Yes; lease to provide coal will be sold at fair and reasonable prices; Interstate Commerce Commission to fix selling price by complaint.	Yes; whole for 20 years; thereafter one-half.
S. 2860	Yes	No	No	Yes; but not buildings.	No	do	Yes; fair and reasonable prices.	Yes; one-half.
H. R. 24667	No	do	Yes	Left to common-law rule.	Yes; such as necessary.	do	No.	Do.
H. R. 25749	do	Yes; 10 acres until 1920; terms and conditions as prescribed by Secretary.	do	do	Yes; such as Secretary may grant.	do	do	Yes; 75 per cent.
S. 6692	Same as H. R. 24667.							
S. 7030	No	Yes; 10 acres until 1920; terms and conditions as presented by Secretary.	Yes	Left to common-law rule.	Yes; such as Secretary may grant.	Yes	No	Yes; one-half.
H. R. 7085	No	No	Yes; prohibited absolutely.	No	No	No	No	No.
S. 473	Same as bills by same author, S. 1583 and H. R. 23701.	Same as bills by same author, S. 1583 and H. R. 23701.						
S. 1325	No	No	Yes	Yes; without detriment to mine.	No	No	No	No.
S. 2714	Same as H. R. 7085.							

Coal land leasing bills introduced in Congress—Continued.

Bill No.	Congress and session.	Author.	Subject in brief.	Term in years.	Area in acres.	Rent per acre.	Royalty per ton.	Preferential right to renewal.
S. 473	63d, 1st	Gronna	Lease of coal lands in United States and Alaska.				Same as bills by same author, S. 1583 and H. R. 23701.	Same as bills by same author, S. 1583 and H. R. 23701.
S. 1325	do	Crawford	do	25	2,560	5 per cent of classified price.	½ cent to 5 cents per ton	Yes; 25 years.
S. 2714	do	Poindexter	Construction of railroad; establishment of a coal reserve.					Same as H. R. 7081.

Bill No.	Prospecting license.	Domestic location.	Assignment prohibited without consent.	Right to remove fixtures.	Easements.	Rentals credited against royalties for same year.	Provision fixing selling price of coal.	Proceeds credited to Alaska fund.
Memorandum	Yes; 12 to 24 months; 5,120 acres; 10 cents per acre.	Yes; 40 acres; 5-years; terms discretionary.	Yes	Yes; such as not deemed necessary to retain succeeding lessee to pay for.	Lessee given right to such as Secretary finds necessary.	Yes	Yes; to be inserted in lease subject to change.	No.
H. R. 23701 [1]	do	Yes; 40 acres; 5-year terms; terms discretionary.	Yes	do	do	Yes	do	No.
S. 5487	Same as Secretary's memorandum of bill as above.	Same as Secretary's memorandum of bill as above.						
S. 6707	No	No	Yes	Not stated	No	No	No	No.
H. R. 32080	Yes; 3 years; 3,200 acres; 25 cents to $1 per acre.	Yes; 160 acres; 10 years; terms same as lease.	Yes	Yes; except as necessary for preservation of mine.	No	No	Lease to provide; should be sold at fair and reasonable prices.	Yes; three-fourths.
S. 9955	Yes; 2 years; 2,560 acres; 25 to 50 cents per acre.	Yes; 40 acres; 10 years; terms as for lease.	Yes	No; court to decree disposition in case of forfeiture.	Yes; after land withdrawn by Secretary.	Yes	Lease to provide; should be sold at fair and reasonable prices. Under jurisdiction of Interstate Commerce Commission.	Do.

H. R. 13115	Yes; 2 years; 5,120 acres; 10 to 25 cents per acre; 50 cents per acre if renewed.	do	Yes	Yes; such as Secretary decides can be removed without injury to mine.	Yes; under regulations of Secretary.	Yes	Yes; lease to provide coal will be sold at fair and reasonable prices; Interstate Commerce Commission to fix selling price by complaint.	Yes; whole for 20 years; thereafter one-half.
S. 2360	Yes	No	No	Yes; but not buildings.	No	do	Yes; fair and reasonable prices.	Yes; one-half.
H. R. 24667	No	do	Yes	Left to common-law rule.	Yes; such as necessary.	do	No.	Do.
H. R. 25749	do	Yes; 10 acres until 1920; terms and conditions as prescribed by Secretary.	do	do	Yes; such as Secretary may grant.	do	do	Yes; 75 per cent.
S. 6692	Same as H. R. 24667.							
S. 7030	No	Yes; 10 acres until 1920; terms and conditions as presented by Secretary.	Yes	Left to common-law rule.	Yes; such as Secretary may grant.	Yes	No	Yes; one-half.
H. R. 7085	No	No	Yes; prohibited absolutely.	No	No	No	No	No.
S. 473	Same as bills by same author, S. 1583 and H. R. 23701.	Same as bills by same author, S. 1583 and H. R. 23701.						
S. 1325	No	No	Yes	Yes; without detriment to mine.	No	No	No	No.
S. 2714	Same as H. R. 7085.							

Coal land leasing bills introduced in Congress—Continued.

OTHER BILLS REGARDING ALASKA AND ALASKAN COAL FIELDS.

Bill No.	Congress and session.	Author.	Subject in brief.	Digest of bill in brief.
H. R. 17993	61st, 2d	Wickersham	Establish coal reserve in Alaska (same as S. 6574)	
S. 6574	do	Perkins	do	Provides for commission to select 5,000 acres in each field, which are to be reserved for naval use.
H. R. 12223	62d, 1st	Wickersham	do[1]	Provides for appointment of commission to segregate coal reserve.
H. R. 13865	do	Lindbergh	Provide for development and use of mineral resources in Alaska.	Provides for commission to locate and mine mineral wealth of Alaska.
H. R. 16557	62d, 2d	Sulzer	Construct railroad in Alaska; establish coal reserve	Provides for commission to construct railroad to Matanuska fields and Yukon River, segregate 30,000 acres of coal land for naval use and mine coal therein through Bureau of Mines.
H. R. 24795	do	do	Construct railroad in Alaska and establish coal reserve in Matanuska coal fields.	Provides for commission to construct railroad in Alaska, segregate 20,000 acres of coal lands in Matanuska fields and mine coal therein.
S. 6864	do	Jones	Construct railroad to Bering River fields; establish coal reserve.	Provides for commission to build railroad to Bering River field, segregate 10,000 acres and mine the coal therein.
H. R. 1739	63d, 1st	Wickersham	Construction and operation of railroad in Alaska	President to organize service and construct railway in Alaska, connect with a coal field, etc.
H. R. 1799	do	Lafferty	Mining of coal in Bering River field, construction of railroad thereto.	Provides that Secretary of War shall mine coal in Bering River field, construct a railroad thereto, furnish coal for Government uses, sell surplus, etc.
H. R. 1805	do	do	Construct railroad in Alaska, mining of coal in Matanuska field, etc. (same as H. R. 16557 (Sulzer) introduced at previous session).	Provides for commission to construct railroad in Alaska, connect with Matanuska coal field, and mining of coal therein by Bureau of Mines.
H. R. 1806	do	do	Construction of railroad, mining of coal for naval use, etc., in Alaska (see S. 133, a similar measure).	Provides for commission to construct railroad in Alaska, segregate 20,000 acres coal reserve in Matanuska fields and mine coal therein.
H. R. 2145	do	Anderson	Construction of railroad in Alaska; furnishing of transportation of fuel for Navy and Army (same as H. R. 16557 (Sulzer) introduced at previous session).	
H. R. 7085	do	Bryan	Construction of railroad, establishment of coal reserve	Reserves one-half of coal deposits in Alaska, provides for establishment of a transportation service and a mining service.
S. 48	do	Chamberlain	Construction of railroad in Alaska (same as H. R. 1739)	
S. 133	do	Jones	Construction of railroad in Alaska (similar in most respects to H. R. 1806; see S. 48).	Provides for construction of a railroad in Alaska, the appointment of a commission, the segregation of a coal reserve and the mining of coal under direction of the President.
S. 2279	do	Pittman	Construction and disposal of coal lands in Alaska	Reserving even numbered sections of coal lands for Government use, and authorizing President to mine coal therein.

[1] Is an abridgment of S. 6574 introduced at previous session.

Mr. LENROOT. I also wanted to ask Dr. Holmes to consider section 3, as to whether it is mandatory on the part of the Secretary to offer these blocks or tracts as provided there?

Dr. HOLMES. Yes, sir; I will.

The CHAIRMAN. Mr. McKenzie, do you care to go on now and call the committee's attention to the matters you spoke of before recess?

Mr. MCKENZIE. If you desire, Mr. Chairman.

The CHAIRMIN. If it will be more comfortable for you, you may be seated there, Mr. McKenzie.

Mr. MCKENZIE. Mr. Chairman and gentlemen of the committee, I wish to state now that I do not desire personally to participate in a lease of coal lands in Alaska, no matter what kind of lease the committee might offer. I do not expect to engage in the coal business. My only desire in this matter is to get a form of lease by which our coal lands may be opened. I do not care to discuss the lease in a general way, but simply to call attention to one or two features bearing on the matter. One is the length of time for which the lease should be given. Now, we have some very serious problems to overcome in the Bering fields to mine coal economically. In the western end of the field the coal can be reached with comparative ease; but the best and highest grade coal in the field lies in the northeastern section, and it will require a large amount of capital to develop a mine, and it is going to take a great deal of what you might call experimenting, and it will require a large sum of money in prospecting before we can know just how to attack the mine. One thing that handicaps us in the lack of suitable timber for mining purposes.

All the timber in the vicinity of the coal field is spruce, and in that locality, where we have from 150 to 160 inches of annual rainfall, spruce is naturally soft and sappy, and it is not a timber that will stand any great amount of pressure. If we have to depend on timber from the States it will make the operation of mining too expensive; we can not afford to transport timber 1,200 miles for mining purposes. All the timber, such as it is, in the vicinity of these mines will soon be exhausted—a few years' operation will exhaust the supply.

This brings us up to the proposition of finding some way of mining coal economically without the use of much timber. That means a large investment of money to start with. I would want a million dollars in sight before I stuck a pick in the ground to open a mine. We will be compelled to mine by what miners call the "long wall system"—driving the tunnels through to the limits of the property and mine back to the portal, letting the roof fall in. Dr. Holmes suggested that we might use sand, as they do in some mines in Pennsylvania, for filling the spaces after the coal has been extracted; but in the eastern section of our coal fields that would mean hauling the sand so far that it would be too expensive.

Mr. GRAHAM. It would not be practicable at every point, but you might fill an abandoned section of some of the mines where the coal had been worked.

Mr. MCKENZIE. There is no convenient sand in the section of the field I have referred to.

Mr. GRAHAM. But could you use sand at all in the vicinity where work was actually being done?

Mr. McKENZIE. I doubt it.

Mr. GRAHAM. I don't think you could.

Mr. McKENZIE. I doubt it very much.

Mr. GRAHAM. You would have to have some kind of props to keep the roof up.

Mr. McKENZIE. They are using sand in Pennsylvania to fill the shafts and rooms where the coal has been extracted, but conditions would make this method impracticable in the most of the Bering mines. I can not imagine how you could economically fill the tunnels with sand when you are mining uphill. However, I am not a practical coal miner.

I fear that under a short-term lease the mines will be robbed, the miner will grab the easy coal, and at the end of the 20 years the Government will have a lot of wrecked property on its hands that will require a tremendous sum of money to restore the property. The committee is working hard to evolve some method for getting that coal out economically and to prevent monopoly; I don't believe you are going to be bothered very much with monopolies for a great many years. British Columbia has a world of good coal, and you must remember, too, that British Columbia has very liberal coal-land laws. They also have an advantage over Alaska in the matter of climate, and they have worlds of good timber convenient to their mines. In my judgment they can produce coal in British Columbia cheaper than we can possibly do it in Alaska. We also have California oil to compete with. They are now selling petroleum in Alaska at a price that equals $3.90 a ton for coal. So you see what we have to contend with.

Mr. GRAHAM. How about the supply of oil there?

Mr. McKENZIE. We don't know very much about the Alaska oil; only three or four wells have been sunk. Prospecting for oil was stopped by the general withdrawal order.

I believe it would be the better policy for the Government instead of making a short-term lease to give a liberal, long-term lease or operate the mines itself. I doubt very much if you are going to find anybody who will take a short-term lease. People like Mr. Ryan and his friends, who control large capital, might take a lease and build a railroad from salt water. If you want to develop those fields and conserve the coal, give a liberal lease or let the Government operate the mines.

Mr. GRAHAM. Mr. McKenzie, why do you assume that it is a 20-year lease? The bill says for "indeterminate periods," with, of course, the right to readjust prices at the end of 20 years.

Mr. McKENZIE. That would be a 20-year lease. Nobody would——

Mr. GRAHAM. No; I don't think so. The lessee, in the first instance, has the continued right to remain there if he accepts the new terms.

Mr. McKENZIE. There is the trouble I anticipate: Would capital invest the necessary large amount of money to open those mines; could you find men willing to take leases on such uncertain conditions, not knowing what that readjustment at the end of 20 years would be? I doubt it.

If we were sure of a market, it might be all right. We have anthracite coal in Alaska, but we have a small market for it on the Pacific

coast. Our Government is now going into the railroad business and I believe the chief concern should be to get a law that will induce people to go in there and develop those mines; and unless the lease is as attractive as fee simple title, the development will be very limited. The lease must not be handicapped.

Mr. LENROOT. What handicaps have you in mind?

Mr. MCKENZIE. Any antimonopoly clause that would be too severe in its nature. I believe Judge Wickersham has suggested the only truly antimonopoly measure—sell the lands and the Government retain the right to regulate the selling price of the coal.

Mr. LENROOT. Would not that be a deterrent to capital as much as these other methods which have been suggested?

Mr. MCKENZIE. It would not be to me, Mr. Lenroot; but I haven't any money to invest. I don't know how it would strike people with money.

There is another thing to be considered, and I think it is more important than anything which has been mentioned in connection with this subject, and that is, Are the lessees going to be properly protected by law? I am free to confess that I would not enter into any kind of a contract with the United States Government where a department official has despotic power—the first and last call, with no privilege to appeal to the courts of law and justice.

We have to-day a Secretary of the Interior who is honestly striving to do the best he can to develop Alaska. We have a land commissioner who is also working along the same lines. I have the greatest confidence in the present Secretary of the Interior and Commissioner Tallman; I have never had but one interview with the commissioner. I went to him with a request. I asked him to do a certain thing and he turned me down, but he talked to me in such a frank and manly way, and gave me his reasons so clearly for refusing my request, that I left him well satisfied. If we could have such men in office always it would be all right. But even Secretary Lane doesn't have the personal say so on all these matters; he has some seventeen thousand men employed under his supervision all over the United States, and one of his special agents may go out to make an investigation for him; the special agent may have some personal grudge against the man he is investigating, who may be way off in Alaska. He sends in his report and it goes to the Secretary, and the Secretary is bound to act on that; there is no way to get around that, and maybe $100,000, or your life's savings are sacrificed; this has happened. We have failed to develop those coal fields under the laws you have heretofore passed. The Land Office has thrown us out on some little technicality. We have asked that our claims be adjudicated by a court of law, but have been denied this relief. Government agents and detectives have committed greater crimes in attempting to dispossess us than was committed by the coal claimants. We don't want such a condition to continue with this new leasing law. We have suffered the loss of our money, many of us our life's savings, and we hope that Congress won't leave any loophole for that to occur again in the new system.

I am not a lawyer and can not suggest just how to prevent these wrongs, but my special appeal to this committee is, that you guard

against those things—the interests of the individual should be looked after just as carefully as the interests of the Government; you ought to care for the individual a little better, for his money is soon gone, while the Government has plenty. So my request to this committee would be to make the protection of the individual an important feature in this bill or any law where you are dealing with public lands.

Mr. FERGUSSON. Have you anything to suggest that would prevent any injustice to any lessee who might go there?

Mr. MCKENZIE. I am not qualified to frame a law to accomplish this. I can only point out the danger and ask you gentlemen to frame a just law that will encourage the development of that country and deal justly with the pioneer and not destroy him.

Mr. FERGUSSON. I don't think we will have anything in the bill that will do that.

Mr. LENROOT. I think the bill authorizes no discretion on the part of the Secretary after a lease is once made, and the courts are open to all controversy between the lessee and the Government.

Mr. MCKENZIE. Here is what happened to many locators of Alaska coal claims acting under the law of 1904. With your permission, I will read a portion of a statement I made before the Senate Committee on Public Lands during the last Congress:

As an instance of the technical manner in which the Land Department is attempting to forfeit coal entries in Alaska against which no substantial objection can be urged, let me state that when the original order of withdrawal was made in November, 1906, all coal lands that had been located were included with the unoccupied lands. This stopped all proceedings to perfect titles to claims that had been entered and were in process of proceeding to patent. Later on the original order was so far modified as to permit the claimants who had located coal claims before the original withdrawal order was made to proceed with their proofs and payment. At that point the Land Office notified the various claimants that the time elapsing between the date of the original withdrawal order and the time they received this notice would not be counted as running against the three years during which the coal claimants must make payment and apply for patent under the coal-land law.

In other words, the three-year period was to be enlarged equal to the time that proceedings had been suspended. This was apparently fair and equitable, but now listen to the sequel. As soon as the original three-year period had expired these same coal claimants received notice to show cause why their claims should not be canceled, because they had failed to apply for their patents within the three years from the time of original location, and when met with the claim that the time had been extended by the Land Department of the United States, and that the coal claimants had relied on that extension, it is admitted by the Land Office that the extension of time was voluntarily made, but the Land Office now says that the Land Office had no authority to do what it did do, and therefore the rights of the claimants have lapsed and their claims have been forfeited for nonpayment within the original three years, regardless of the fact that the time for making final proofs and payments had not expired under the time as extended. The Land Department pulled these innocent prospectors into inaction and now seeks to punish them for relying upon its own representations and promises.

I hope that you gentlemen will make a law that will prevent sharp practice of this character. I want to say that if Congress when it passed the first coal-land laws had given us the right to appeal to the courts there never would have been an Alaskan coal-land row, and there would probably be 500,000 people living in the Territory of Alaska to-day. I verily believe this to be true.

I hope you will, in the framing of this bill, carefully regard the interests of the man who put the pack on his back and went into that country to develop it, so far he has received scant sympathy from our Government.

I think, Mr. Chairman, that is all I care to say.

The CHAIRMAN. Have you had a chance to look over the bill, Mr. McKenzie?

Mr. MCKENZIE. I have not looked it over very carefully. I depend on Judge Wickersham to look out for our interests, he is familiar with all conditions and is extremely anxious for Alaska's development.

The CHAIRMAN. Have you become convinced that a leasing bill is about the only relief you can get up there?

Mr. MCKENZIE. Yes, sir; there is no doubt of public opinion being in favor of it; but I don't believe a leasing bill is as good as the idea Judge Wickersham has suggested. I think that is the true solution of the thing—sell these lands in reasonable size tracts and then have the Government reserve the right to regulate prices. Then, let private enterprise go ahead with the development, while the Government makes regulations for the protection of life and protection of property, etc.

The CHAIRMAN. Do you not think, Mr. McKenzie, that there has been so much written and so much said about the coal lands in Alaska, some of which is true and probably a great deal of which has been distorted unnaturally, that about the only bill that could be passed and about the only thing the country would approve of and Congress would approve of is an equitable leasing law?

Mr. MCKENZIE. You are right about public opinion.

The CHIRMAN. Do you not think that is a fair statement of the situation?

Mr. MCKENZIE. I think so; yes, sir.

The CHAIRMAN. That being true does it not become the duty of the people of Alaska and the duty of Congress to set about getting as good a leasing law as they can?

Mr. MCKENZIE. That is undoubtedly true.

The CHAIRMAN. That is the duty of Alaskan people generally, is it not?

Mr. MCKENZIE. Yes, sir; Alaskan people are with you for a speedy solution of this problem.

The CHAIRMAN. And as to the specific provisions of the bill you are willing to trust to your Delegate in Congress, Mr. Wickersham?

Mr. MCKENZIE. Yes, sir; we leave those matters to our Delegate; he is amply qualified to meet them.

The CHAIRMAN. Mr. Wickersham, will you prefer to go ahead now?

Mr. WICKERSHAM. No; it is late and the committee is tired and I would prefer to begin in the morning.

The CHAIRMAN. Is there any other gentleman here who has any remarks to make? If not, and it is the will of the committee, we will adjourn at this time until to-morrow morning at 10 o'clock, at which time Judge Wickersham will be heard.

(Thereupon, at 4.15 p. m., the committee adjourned.)

COMMITTEE ON PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Thursday, February 26, 1914.

The committee was called to order at 10.20 a. m., Hon. Scott Ferris (chairman) presiding.

The CHAIRMAN. We will now hear Judge Wickersham, who will address the committee on H. R. bill 13137.

STATEMENT OF HON. JAMES WICKERSHAM, A DELEGATE IN CONGRESS FROM THE TERRITORY OF ALASKA.

Mr. WICKERSHAM. Mr. Chairman and gentlemen of the committee, in the act of May 17, 1884, Congress, for the first time, extended the mining laws to Alaska. Those were the laws relating to the precious metals, gold and silver, and did not include coal. Section 8 of that act specially excluded the general land laws of the United States from Alaska, so that after its passage, and it was the first act to extend any of the land laws to Alaska, we had there only the mining laws relating to precious metals. That condition contiuned until the act of June 6, 1900, was passed. In the meantime coal had been discovered in the Bering River and other fields.

THE UNITED STATES COAL-LAND LAWS EXTENDED TO ALASKA, 1900—FIRST ERA: ACT JUNE 6, 1900.

The coal-land laws of the United States were first extended to Alaska by the act of June 6, 1900 (31 Stat. L., 658), as follows:

AN ACT To extend the coal-land laws to the District of Alaska.

Be it enacted, etc., That so much of the public-land laws of the United States are hereby extended to the District of Alaska as relate to coal lands, namely, sections 2347 to 2352, inclusive, of the Revised Statutes.

This act extended all the general coal-land laws then in force in the United States to Alaska, and thereafter identically the same coal-land laws were in force in Alaska and in Arizona, Washington, Montana, and the other States and Territories of the United States, until the modifying act of April 28, 1904, was passed.

However, it was soon discovered that the general laws thus extended were ineffective in Alaska, and in the circular issued June 27, 1900, the Commissioner of the General Land Office instructed the local land officers there that:

"Under the coal law sections 2347 to 2352, inclusive, of the Revised Statutes, and the regulations thereunder, issued July 31, 1882, coal-land filings and coal entries must be by legal subdivisions as made by the regular United States survey. * * * Although the system of public-land surveys was extended to the District of Alaska by a provision contained in the act of Congress approved March 3, 1899 (30 Stat., 1098), no township or subdivisional surveys have been made, nor have any standard lines or bases for township and subdivisional surveys been established within the district; therefore until the filing in your office of the official plat of survey of the township no coal filing or entry can be made."

SECOND ERA—THE AMENDMENT ACT OF APRIL 28, 1904.

This defect in the general laws was remedied by "An act to amend an act entitled 'An act to extend the coal-land laws to the District of Alaska,' approved June 6, 1900," which amendatory act was approved April 28, 1904. The act provided:

[Act April 28, 1904 (33 Stat., 525).]

AN ACT To amend an act entitled "An act to extend the coal-land laws to the District of Alaska," approved June sixth, nineteen hundred.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person or association of

persons qualified to make entry under the coal-land laws of the United States, who shall have opened or improved a coal mine or coal mines on any of the unsurveyed public lands of the United States in the district of Alaska, may locate the lands upon which such mine or mines are situated, in rectangular tracts containing forty, eighty, or one hundred and sixty acres, with north and south boundary lines run according to the true meridian, by marking the four corners thereof with permanent monuments, so that the boundaries thereof may be readily and easily traced. And all such locators shall, within one year from the passage of this act, or within one year from making such location, file for record in the recording district, and with the register and receiver of the land district in which the lands are located or situated, a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily identify the same.

SEC. 2. That such locator or locators, or their assigns, who are citizens of the United States, shall receive a patent to the lands located by presenting, at any time within three years from the date of such notice, to the register and receiver of the land district in which the lands so located are situated an application therefor, accompanied by a certified copy of a plat of survey and field notes thereof, made by a United States deputy surveyor or a United States mineral surveyor duly approved by the surveyor-general for the District of Alaska, and a payment of the sum of ten dollars per acre for the lands applied for; but no such application shall be allowed until after the applicant has caused a notice of the presentation thereof, embracing a description of the lands, to have been published in a newspaper in the District of Alaska published nearest the location of the premises for a period of sixty days, and shall have caused copies of such notice, together with a certified copy of the official plat of survey, to have been kept posted in a conspicuous place upon the land applied for and in the land office for the district in which the lands are located for a like period, and until after he shall have furnished proof of such publication and posting, and such other proof as is required by the coal-land laws: *Provided*, That nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district.

SEC. 3. That during such period of posting and publication, or within six months thereafter, any person or association of persons having or asserting any adverse interest or claim to the tract of land or any part thereof sought to be purchased shall file in the land office where such application is pending, under oath, an adverse claim, setting forth the nature and extent thereof, and such adverse claimant shall, within sixty days after the filing of such adverse claim, begin an action to quiet title in a court of competent jurisdiction within the District of Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of such court therein.

SEC. 4. That all the provisions of the coal-land laws of the United States not in conflict with the provisions of this act shall continue and be in full force in the District of Alaska.

Now, in 1904 that was the law in Alaska.

Mr. GRAHAM. Just a word there. It refers only to any surveyed coal land. As a matter of fact, there were no unsurveyed coal lands included in the laws of Alaska.

Mr. WICKERSHAM. No. Under the act of 1904 all the claimants in the Bering River and the Matanuska coal fields made their claims, and such efforts as they made to secure title to coal lands in Alaska up to 1908 were made under this act of 1904, because it was the only act which gave any validity to their efforts to secure title to coal lands in Alaska.

The CHAIRMAN. And they pursued their proof under that law as well?

Mr. WICKERSHAM. Yes, sir. Now, upon the approval of the act of 1904 the coal-land laws in Alaska embraced, first, all the coal-land laws of the United States, because they had already been extended to Alaska. And in addition to the general land laws of the

United States, which were equally in force in all the Western States and Territories, we had this act of 1904, which permitted the location of unsurveyed lands also.

The CHAIRMAN. It did not require it in rectangular form.

Mr. WICKERSHAM. It required the lands to be located on lines north, south, east, and west—substantially, at least.

The CHAIRMAN. That was later changed?

Mr. WICKERSHAM. No. So far as I know that is still the law.

The CHAIRMAN. I wonder how they got hold of these irregular-shaped tracts shown on this map.

Mr. WICKERSHAM. I think if you will get the official surveys you will find the lines really run north, south, east, and west.

The CHAIRMAN. Perhaps they are.

Mr. WICKERSHAM. After the passage of this act of 1904 the coal claimants of Alaska entered upon their period of proof making, and it was discovered in a little while by those responsible for the situation in Alaska that there was an effort being made by certain interests to acquire large areas of this valuable coal land. It was discovered that the Alaska syndicate, for instance, had entered into a contract with the Cunningham claimants for the purchase of the 33 Cunningham claims. The contract between the Cunninghams and the Guggenheims was not made public, but enough of it became known to make it perfectly apparent that there was an effort being made to monopolize the coal lands in Alaska by those who were then in control of the transportation facilities of the Territory.

Without going into any detail, the matter attracted so much attention and brought so much criticism and muckraking that in November, 1906, the President of the United States made a general order withdrawing all the coal lands in Alaska for the purpose of preventing this monopoly of the lands by the big interests. The first order is dated November 7, 1906, and reads as follows:

THE WHITE HOUSE, *November 7, 1906.*

To the SECRETARY OF THE INTERIOR:

In reference to your letter of the 7th instant, inclosing letter of the Acting Director of the United States Geological Survey of November 3, I direct that the proposed action in reference to the coal lands of Alaska be taken. I return the letter of the acting director herewith.

THEODORE ROOSEVELT.

Mr. WICKERSHAM. The letter referred to by the President in his Executive order was simply the last of a series of documents from the department calling attention to the situation in Alaska and recommending the President to make a reservation of all the coal lands there. His was the document which gave validity to the withdrawal which had been recommended by the Director of the United States Geological Survey through the Secretary of the Interior. It was discovered——

Mr. LENROOT (interposing). Right there, Mr. Wickersham. The acts leading up to this were based upon any legal power or right to withdraw?

Mr. WICKERSHAM. I think not.

Mr. LENROOT. Does nothing appear in the documents themselves as to any claim of right to do so?

Mr. WICKERSHAM. Well, yes; I think so. I think there is an attempt upon the face of the letters addressed by the Geological De-

partment to the President, through the Secretary of the Interior, to show legal authority for it, but I have always doubted whether there was any legal authority for that withdrawal by the President, and I very much doubt whether there is any legal authority for the present order of withdrawal signed by President Taft under the act of 1910.

The CHAIRMAN. It has been ratified now.

Mr. WICKERSHAM. Ratified by President Taft's withdrawal, but the act of 1910 provides for the withdrawal of lands for certain specific purposes and none of these purposes seem to be included within the act performed by the President. There is no way to take up that matter at this time.

Mr. LENROOT. The only possible bearing I think it might have would be as to any lawful rights these claimants might have growing out of an unauthorized withdrawal as an excuse for not doing certain things.

Mr. WICKERSHAM. Attorneys will probably differ about that. I do not know of any authority that will finally settle it except the Supreme Court of the United States, and my opinion would not be worth very much on the subject and I do not think it ought to go into the record.

It was soon discovered that this withdrawal of November 7, 1906, was a bar to any proceeding for proof by locators who had filed on coal lands in Alaska prior to November 6, 1906. There was no exception.

The CHAIRMAN. Did the department construe the Executive order of President Roosevelt to have full force and effect as to the entered lands as well as to the unentered lands?

Mr. WICKERSHAM. Either they did that or there was such grave doubt about it that immediately thereafter another order was prepared to cover the situation.

The CHAIRMAN. Are you going to present that now?

Mr. WICKERSHAM. Yes, sir. On January 15, 1907, two months after the original order was made, this order was also made:

DEPARTMENT OF THE INTERIOR,
Washington, January 15, 1907.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: By direction of the President all orders heretofore issued withdrawing public lands from entry under the coal-land laws are hereby amended as follows:

"Nothing in any withdrawal of lands from coal entry heretofore made shall impair any right acquired in good faith under the coal-land laws and existent at the date of such withdrawals."

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

Mr. WICKERSHAM. That left the way open for all those entrymen in Alaska who had made coal-land locations prior to November 7, 1906, to complete their entries and to take their lands under patent, and they began to do that. There were several hundred applications for entry pending in the departments, and many of them sought to complete their entries and to secure title to their properties, including, among others, the Cunningham claimants, and substantially including all the lands in the Bering River field and a portion of the lands in the Matanuska field. In the meantime, the general public became very much interested in Alaska coal. It became

fearful that an effort was being made to monopolize the coal lands in that Territory. Accounts were published through the magazines, newspapers, and otherwise showing the valuable contents of these coal lands in Alaska, which inflamed the public mind. Take, for example, the State of Illinois, and most of the States where coal lands underlie a wide country. They are generally in blanket layers at a reasonable depth from the surface and from 3 to 6 feet in thickness. We generally make calculations about the contents of coal areas having the ideal coal claim of that kind in our minds, but the situation is altogether different in Alaska. The Bering River coal fields contain veins of great thickness, from six to eight times the contents of the ordinary coal-mining acre in the States.

Another situation presented itself. There is in California no coal of any kind. There is some coal in Oregon, but it is a low-grade coal and of little value. In Washington there is more coal than there is in Oregon and it is of a higher grade, but it does not reach above the grade of reasonably good bituminous coal. It is not a coking coal. It is not a Navy coal or high-grade coal. There is no coal on the Pacific coast of the United States anywhere, favorably or unfavorably situated, that can be used for coking purposes or for Navy coal, except that which is in Alaska, and it was in reference to these high-grade coals in those small areas that Dr. Brooks spoke about the other day, to which general attention was called with the claim that the big interests were seeking to monopolize it. The public became fearful that if that effort was not stopped there would be a more complete monopoly of coal on the Pacific coast of the United States than existed in Pennsylvania. The bituminous fields in Pennsylvania are not highly monopolized, but the higher grade coals are, and the general public did not want that repeated in the Territory of Alaska, because it was the only high-grade coal on the Pacific coast.

I want to call your attention to another thing. The coal area in Alaska is very large. Dr. Brooks's report shows that the Geological Survey has examined only one-fifth of the total area of Alaska and in that one-fifth they have located substantially 12,000 square miles of coal-bearing lands. Now, if the other four-fifths has an equal amount we would have about 60,000 square miles of coal-bearing lands in the Territory of Alaska. But it is nearly all low-grade coal. Along the shore of Cooke's Inlet there are many square miles, large areas of coal lands fronting on the sea and the harbor, but it is all low-grade coal.

The CHAIRMAN. It would not bear shipping?

Mr. WICKERSHAM. No, sir. There is near my town of Fairbanks large areas of good coal. It is lignite coal—a good grade of that kind, however.

Mr. GRAHAM. Do you know of any quality of coal we are familiar with in the States that would give us an idea of the character of it?

Mr. WICKERSHAM. No; I am not a coal expert. I can not give you any accurate detail of that kind.

Mr. GRAHAM. It is of poorer quality, is it not, than any bituminous coal mined in the States?

Mr. WICKERSHAM. I judge our lignites are poorer coal than your bituminous coal. While we have these large areas of coal land they are generally of a low grade. We have only two areas of high-

grade coal, so far as we now know—the Bering River coal field, only 44 square miles——

The CHAIRMAN (interposing). The reports show 35 square miles.

Mr. WICKERSHAM. Yes; that is probably correct. Now, the bill under consideration allows the leasing of 2,560 acres in four sections of land. That would make only 8 leases in the whole Bering River coal field. I state that to show you the small area of the high grade and most valuable coal lands in Alaska. The Matanuska probably has twice as much, but that would be only 18 claims. There you have only 26 claims. Assuming you can lease all this high-grade coal land, you have only 26 ideal claims of 2,560 acres to lease. I am calling that specifically to your attention to show you how little of this high-grade coal we have, although we have immense areas of low-grade coal there.

The CHAIRMAN. I suppose you would not want to say what is the maximum area?

Mr. WICKERSHAM. No; I am merely asking this general statement, assuming that you know the situation as well as I do. We may discover more coal of a high grade. We have now discovered thousands of acres of low-grade coal. The coal at Fairbanks would give us a local supply that we very greatly need. We have needed it for more than 10 years. We have been paying as high as $10 to $12 and up to $18 a cord for wood to be used there in mining operations.

Mr. BROWN. Have the Government officials interfered with the use of that coal?

Mr. WICKERSHAM. Oh, yes; by saying it was illegal to mine it, and warning people not to use it.

Mr. BROWN. Suppose they have used some of it?

Mr. WICKERSHAM. When they are in its immediate vicinity the miners do use it, and it is in the immediate vicinity of some of their mines.

Mr. BROWN. For what purpose do they need it?

Mr. WICKERSHAM. For mining purposes. In mining placer gold at Fairbanks they sink a shaft down to bedrock, say 50 to 125 feet, and from the bottom drive drifts off to take out the gold-bearing gravels which they hoist to the surface in the wintertime, and in the summer time wash them up. In doing that work in the wintertime they have to thaw the gravels, as they are frozen, and have to thaw them with steam. We need a great deal of fuel in this work, and fuel has been very expensive in the past 10 years. The expense of taking out that gold has been enormously increased for want of this fuel, and that is one of the problems I want to call to your attention.

Mr. BROWN. When you get down to bedrock is there anything to show that there is any gold in the rock itself?

Mr. WICKERSHAM. Oh, these are placer and not quartz claims. Of course, for many years no one thought of working quartz because we could get so much more money out of the placer, but we now wish to begin to work the quartz. We can not work those veins without fuel, and we have not the fuel except in the coal veins across the valley. We have quartz veins around Fairbanks averaging from $10 up to $50 a ton, but we can not work them because we have no cheap fuel.

Mr. BROWN. That is similar to conditions in California?
Mr. WICKERSHAM. Yes, sir.
Mr. BROWN. You take out the gravels first?
Mr. WICKERSHAM. Yes, sir.
Mr. BROWN. And then the quartz?
Mr. WICKERSHAM. Yes, sir.
Mr. GRAHAM. You give Mr. Brown the impression that the bed-rock that contains this gold is gold-bearing quartz.
Mr. WICKERSHAM. I do not mean to do that, but the fact is that the places or gravels come down hill from the quartz veins which exist higher up the hillsides.
Mr. GRAHAM. I suppose his question would indicate that.
Mr. WICKERSHAM. I did not intend to give that impression. Of course the placer gold comes down from the erosion of the quartz.
Mr. GRAHAM. Is there any source for the placer gold except by erosion of the quartz?
Mr. WICKERSHAM. I think not.
Mr. JOHNSON. The quartz lie in the veins?
Mr. WICKERSHAM. Yes, sir; in the hills at a higher horizon, and by a long process of erosion the gold is freed from the solid rock there and laid down in pay streaks by the old streams whose beds we now excavate.
Mr. JOHNSON. Is that carried a considerable distance?
Mr. WICKERSHAM. They are in near proximity. You find the quartz veins above the placer.
Mr. GRAHAM. Suppose when the erosion was only partial, when pieces of rock of considerable size with gold in them remained intact, the floods would carry them quite a distance, but when the rock portion of it, or the known gold portion of it, was separated by erosion and nothing remained but the gold, its specific gravity would keep it from being carried away further.
Mr. WICKERSHAM. Yes, sir; that is the natural process.
Mr. MCKENZIE. I would say in that connection, that the ice will freeze down to the bottom of the stream solid, and then in the spring of the year when the floods come those cakes of ice sometimes will turn turtle and flow off, carrying half a ton of that gravel, and in that way distributes the gold and quartz quite a distance away from the rock.
Mr. WICKERSHAM. I have called the attention of the committee to the small area of these rich coal mines, and especially to the exceedingly small area of the rich Bering River field, for the purpose of saying to you that it is in those small rich spots that the big interests were accused of having attempted to monopolize the coal. It is unfair to say there can be no monopoly of coal in Alaska because we have 60,000 square miles of it, when the truth of it is there are but a few square miles of coal in Alaska of the highest grade and near by the harbors. As long as those few square miles are there the monopolization of that few square miles is substantially a monopolization of the whole 60,000 square mile in Alaska. None of the other coal fields can be worked in competition with those few square miles which have every advantage over all the other coal fields by reason of their high grade, nearness to market, and other monopolistic advantage.

Mr. GRAHAM. Would you want to make your statement as broad as that with reference to the Matanuska field?

Mr. WICKERSHAM. No; because while that field is of a very high grade, and is equal to and in some respects better than the Bering River coal field, it is farther from market and will cost more to mine and transport.

Mr. GRAHAM. But until it has a railroad leading up to it, it might as well be in Siberia.

Mr. WICKERSHAM. Yes, sir; it is 180 miles back from a harbor, and it requires a railroad and a larger expense to market the coal.

The CHAIRMAN. It is assumed you will have the railroad there. There is 70 miles of track now built up there.

Mr. WICKERSHAM. Yes; 70 miles built out toward Matanuska, but that still leaves a hundred miles to be constructed to reach the coal.

Mr. LENROOT. Can you give any estimate as to the advantage in transportation the Bering field would have over the Matanuska?

Mr. WICKERSHAM. That is a matter for the transportation man entirely; but the Bering field is only 25 miles from a harbor and can also be carried out to Cordova, 90 miles, over a railroad.

Mr. LENROOT. That is a matter of transportation rates?

Mr. WICKERSHAM. Yes, sir. I do not think the one field will have any particular advantage over the other in the matter of mining, but the Bering field has a great advantage in transportation distance.

Mr. KENT. I understand this Bering River field has been torn up so that the veins extend more or less up and down.

Mr. WICKERSHAM. They extend in all directions; there are a great many veins.

Mr. KENT. So that there is a great deal more coal in that field than if it was in one blanket vein?

Mr. WICKERSHAM. Yes; I understand that is true.

Mr. KENT. In other words, if you had one blanket vein and that particular one blanket vein was torn up, you would not have nearly as much coal as you have now?

Mr. WICKERSHAM. Yes; and it is near the surface and exposed by the erosion of the elements, so that they can reach many of those veins very easily.

Mr. KENT. An extraordinary amount of coal is there.

Mr. WICKERSHAM. Yes; to the acre, and the veins are thick and of high grade, and it is thought to be a coal bonanza, exposed to any one who wants to grab, and it was this identical fear of easy monopolization that started all the trouble over the Cunningham claims.

The CHAIRMAN. I do not want to divert you from your statement other than to ask you to give us a little more light on the proposition of the relative feasibility of these two fields. As to those low-grade fields, they are not competitors with either one of those fields?

Mr. WICKERSHAM. No, sir.

The CHAIRMAN. They are low grade and way back in the interior and it would cost a lot to ship it. But as to the feasibility of these two fields, of course the first difference would be that the Matanuska is back about one hundred or more miles than the Bering field. But, aside from that, are there any great advantages?

Mr. WICKERSHAM. No; I think the Bering River coal is equal in value to the Matanuska coal, substantially.

The CHAIRMAN. And what about the depth and the possibility of actually taking it out?

Mr. WICKERSHAM. The Bering River field can be worked from the surface.

The CHAIRMAN. And is the Matanuska as favorable as that?

Mr. WICKERSHAM. I doubt if it is as well situated as the Bering River field—certainly not with respect to distance from the sea.

The CHAIRMAN. You think in addition to the distance with the freight rate, which is important, the Matanuska field is more difficult of operation, as well as further back?

Mr. WICKERSHAM. Yes; I do. Supplies must go into the field. It is farther away from the sea, with high grades over the pass, while the Bering River field has a down-river haul.

The CHAIRMAN. Down grade?

Mr. WICKERSHAM. Yes. In the Bering field it is a matter of yardage. It is only 25 miles, and with a light engine and bunkers in which to deposit the coal, the operator will not need anything like the expensive plant that must go in at the Matanuska.

Mr. GRAHAM. That is on the theory that it went down to Controller Bay.

Mr. WICKERSHAM. Yes.

Mr. GRAHAM. If it went to Cordova, what then?

Mr. WICKERSHAM. A somewhat different situation would arise, but the Bering field would still have great advantages.

Mr. GRAHAM. You would have an upgrade?

Mr. WICKERSHAM. No. If the coal should go around by Katalla, the way the railroad is built, it is on a water level all the way, but it is 90 miles in distance, as compared with 25 miles down to Controller Bay. If the coal goes to Cordova, the distance would be increased 65 miles. On that route it would go over the Guggenheim road, a first-class, well-built railroad. There would be no new bridges necessary on that road except to cross a small river near the coal field.

Now, I have called the attention of the committee to the location of these high-grade coals, and the fear of the general public that it was about to be monopolized in 1906. You have all seen the Guggenheim-Cunningham contract. I have it here; and if the committee will permit it, I will put it in the record, because it follows in chronological order after the act of 1904. It is dated July 20, 1907, immediately after the withdrawal of this land by President Roosevelt on November 7, 1906.

The CHAIRMAN. That is a contract between the Cunninghams and the Guggenheimers?

Mr. WICKERSHAM. Yes, sir.

The CHAIRMAN. Unless there is objection, it will be inserted in the record.

The paper referred to is as follows:

MEMORANDUM.

A. B. Campbell, Clarence Cunningham, and M. C. Moore, acting for themselves and certain parties associated with them, as hereinafter explained and hereinafter called the vendors, make the following representations and proposal to Daniel Guggenheim, of the city of New York, hereinafter called the vendee.

The said Cunningham, Campbell, and Moore, with 30 other parties, have acquired by purchase from the Government of the United States, under the

Federal coal-land laws, 33 tracts of coal land of 160 acres each, aggregating 5,280 acres, situated in the Kayak recording district of Alaska, near the Bering River, about 25 miles from Katalla, and also have acquired certain inchoate water rights on Lake Kustakaw intended to be used in the exploitation of said properties.

The title to these lands rests in final United States receiver's certificate of entry, issued one to each of said 33 persons, and papers in application for patent are now before the Commissioner of the General Land Office for his action thereon.

In order to consolidate the several interests for the purpose of dealing with said properties as an entirety, it has been determined that each of said entrymen shall convey his title to his individual tract to the Union Trust Co., of Spokane, Wash., in trust, for the purpose of transmitting or dealing with the title to the consolidated tract in such manner as shall be directed by C. J. Smith, R. K. Neill, H. W. Collins, Frederick Burbridge, Fred H. Mason, A. B. Campbell, and Clarence Cunningham, or a majority of those acting as a committee of said entryman appointed for that purpose.

Conveyances by some of said entrymen to said trust company have been executed and delivered, and it is contemplated that all will execute similar conveyances within a short time.

A meeting of said entrymen was recently held at the city of Spokane, in which 25 out of the 33 participated. At said meeting a resolution was unanimously passed authorizing said committee, or a majority of them, to enter into negotiations with parties with a view to the equipment, development, and operation of the consolidated property and the sale of its product.

Acting for themselves and as such committee representing their associates, under said resolution, they submit to Mr. Guggenheim for his consideration the following proposals:

1. A corporation shall be formed under the laws of some State of the Union, under which laws meetings of directors may be held without the State of incorporation, the capital stock to be unassessable and no individual stockholders' liability.

2. The capital shall be $5,000,000, divided into 50,000 shares of the par value of $100 each.

3. There shall be seven directors, three to be named by the venders, three by the vendee. The seventh director shall be designated by the six named by the parties.

4. The title of all of said properties, including said inchoate water rights, shall be transferred to said corporation, in consideration for which there shall be issued to said vendors 25,000 shares of said capital stock.

5. The other half of said capital stock, viz, 25,000 shares, shall be deposited in escrow with the Bank of California, Seattle, with instructions to make delivery of same to Mr. Guggenheim or his nominee upon his payment to said depository, to the credit of said corporation, of the sum of $250,000, or at the rate of $10 per share. Said $250,000 shall be paid in such sums and at such times as may be called for by the board of directors. Said money to be considered as "working capital," to be expended by said corporation in the equipment, development, and operation of said properties. As payments are made by Mr. Guggenheim to said bank the bank shall be authorized to deliver to him one share of stock for each $10 so paid by him. Mr. Guggenheim shall have the privilege of paying said entire amount of working capital at any time, and thereupon to receive the entire 25,000 shares of said stock.

6. Should said sum of $250,000 prove inadequate for the purpose of equipping and developing said property, Mr. Guggenheim shall advance or loan to the corporation an additional sum of money not exceeding in the aggregate $100,000, the corporation binding itself to repay such advances on or before three years after the date of making the same, at the option of the board of directors of said corporation, with interest at 5 per cent per annum.

7. Said corporation shall enter into an agreement giving to said Guggenheim or his nominee the exclusive right to purchase, for the period of 25 years, the entire "run of mine" coal mined from said property, or so much thereof as said Guggenheim or his nominee may require or demand, for the sum of $2.25 per ton of 2,240 pounds. The coal is to be delivered at the mine, either in bunkers to be provided by the corporation for that purpose or upon cars, as said Guggenheim or his nominee may direct. Said Guggenheim or his nominee shall use their best endeavors to make a market for the coal in Alaska and in the ports and cities of the United States, to the end that as large a quantity of

coal as possible may be mined. Said Guggenheim or his nominee shall agree to purchase all coal which they may require for use or sale from said corporation.

8. Payment for all coal so delivered to said Guggenheim or his nominee shall be made monthly, upon the basis of weights determined by the mine superintendent, such payments to be made at such place as may be directed by the corporation.

9. The corporation shall convey to such railroad company as may be designated by said Guggenheim, and which shall construct a railroad from tidewater to said mines, sufficient ground from its holding upon which to establish and maintain its tracks, switches, depots, terminals, stations, and other railway facilities.

10. The corporation shall further agree to sell and deliver, during the period of 25 years, to such railroad company as may be designated by said Guggenheim and which may construct a railroad from tidewater to the mines, all coal which may be required by said railroad company for consumption in its locomotives, shops, stations, and other facilities employed in the construction, maintenance, and operation of its railway for the sum of $1.75 per ton of 2,240 pounds, deliveries to be made at the mine in bunkers or on the cars of such railway.

11. The said Guggenheim shall have 20 days from the date hereof in which to determine whether or not he will cause an examination of said properties to be made with a view to an acceptance of this proposal if such examination proves satisfactory. He shall notify the vendors of such determination within said time by telegram addressed to Clarence Cunningham, at Seattle, Wash. Thereupon, if he elects to proceed with such examination, he shall be allowed the period of four months thereafter to inspect the properties and investigate the titles thereof. If such inspection and examination prove satisfactory he shall give notice of his final acceptance of this proposal by telegram directed to Clarence Cunningham, Seattle, Wash.

Thereupon the terms of this proposal shall be deemed binding upon all the parties and shall be carried into effect according to its tenor and purport.

12. It is understood, however, that said vendee shall not be required to proceed with said examination unless all of the 33 of the owners of said coal-land entries, or so many thereof as shall be satisfactory to said vendee, shall have conveyed their respective properties to said trust company, and said trust company shall, under the direction of said committee and as the holder of the title to said properties, have accepted the terms of the proposal and obligated itself to unite with said vendors in carrying the same into effect, in the event the examination of said properties and titles shall prove satisfactory to the vendee and he shall elect to finally accept the same.

Should the number of entrymen declining to convey their respective tracts to said trust company and participate in this proposal be so great as in the judgment of said vendee will prevent the successful inauguration and conduct of said enterprise, then and in that event this negotiation shall be at an end and all parties shall be relieved from all obligations arising hereunder.

Witness our hands in duplicate this 20th day of July, 1907.

A. B. CAMPBELL,
M. C. MOORE,
CLARENCE CUNNINGHAM,
For themselves and as a committee representing their associates.

Signed in the presence of—
S. W. ECCLES.
CURTIS H. LINDLEY.

Mr. WICKERSHAM. That contract was an option given by the Cunningham claimants to Daniel Guggenheim.

The CHAIRMAN. Is that before or after the date of the withdrawal?

Mr. WICKERSHAM. It was after the date of withdrawal. The date of withdrawal was November 7, 1906, and the date of the Cunningham-Guggenheim contract was July 20, 1907.

The CHAIRMAN. Then this was not a basis for the withdrawal?

Mr. WICKERSHAM. No, but it was generally known that negotiations were in process long before the date of the withdrawal for the monopolization of these properties, or at least it was publicly

talked about and a great deal of public interest taken in the matter, and it was upon the assumed fact that the withdrawal was based.

Mr. FERGUSSON. It was the occasion of the withdrawal?

Mr. WICKERSHAM. The general situation was known. Now the Cunningham option was accepted by Daniel Guggenheim on December 7, 1907, as follows:

NEW YORK CITY, *December 7, 1907.*

CLARENCE CUNNINGHAM, Esq., *Seattle, Wash.*

I hereby notify you that I finally accept the proposal made to me by A. B. Campbell, Clarence Cunningham, and M. C. Moore, acting for themselves and associates, in the memorandum of agreement of July 20, 1907.

DANIEL GUGGENHEIM.

(Charge M. G. Sons, Alaska Syndicate.)

Mr. WICKERSHAM. Now, all that I have heretofore set out preceded the act of May 28, 1908, which I think is a very important act, and it is the act of 1908 that I am particularly anxious to call to the attention of the committee. After all these Alaska coal scandals had arisen and the general public was fully aware of the true situation Congress undertook to cure the evils which existed there by the passage of the act of May 28, 1908, which reads as follows:

AN ACT To encourage the development of coal deposits in the Territory of Alaska.

Be it enacted, etc., That all persons, their heirs or assigns, who have in good faith personally or by an attorney in fact made locations of coal land in the Territory of Alaska in their own interest prior to November 12, 1906, or in accordance with circular of instructions issued by the Secretary of the Interior May 16, 1907, may consolidate their said claims or locations by including in a single claim, location, or purchase not to exceed 2,560 acres of contiguous lands, not exceeding in length twice the width of the tract thus consolidated, and for this purpose such persons, their heirs, or assigns may form associations or corporations, who may perfect entry of and acquire title to such lands in accordance with the other provisions of law under which said locations were originally made: *Provided*, That no corporation shall be permitted to consolidate its claims under this act unless 75 per cent of its stock shall be held by persons qualified to enter coal lands in Alaska.

SEC. 2. That the United States shall at all times have the preference right to purchase so much of the product of any mine or mines opened upon the lands sold under the provisions of this act as may be necessary for the use of the Army and Navy, and at such reasonable and remunerative price as may be fixed by the President; but the producers of any coal so purchased who may be dissatisfied with the price thus fixed shall have the right to prosecute suits against the United States in the Court of Claims for the recovery of any additional sum or sums they may claim as justly due upon such purchase.

SEC. 3. That if any of the lands or deposits purchased under the provisions of this act shall be owned, leased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tactitly, or in any manner whatsoever, so that they form part of or in any way effect any combination, or are in anywise controlled by any combination in the form of an unlawful trust, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, or of any holding of such lands by any individual, partnership, association, corporation, mortgage, stock ownership, or control, in excess of 2,560 acres in the District of Alaska, the title thereto shall be forfeited to the United States by proceedings instituted by the Attorney General of the United States in the courts for that purpose.

SEC. 4. That every patent issued under this act shall expressly recite the terms and conditions prescribed in sections 2 and 3 hereof.

Approved, May 28, 1908.

With the approval of the foregoing act, which applies only to Alaska, the Territory of Alaska had, and now has, in force there:

(1) All the general coal-land laws in force in the United States—all the laws relating to coal and coal lands which are in force in the States and in Arizona and New Mexico, and, in addition thereto,

(2) The act of Congress of April 28, 1904, permitting the location and sale of coal lands in Alaska upon the unsurveyed public domain, which can not be located in any other State or Territory, and, in addition thereto,

(3) The act of Congress of May 28, 1908, permitting and legalizing a consolidation or grouping of Alaskan coal lands to the extent of 2,560 acres for large enterprises, giving the United States a preference right to purchase the output for the use of the Army and Navy, and with a drastic antimonopoly clause forfeiting the title of the land to the United States for any unlawful trust or conspiracy in restraint of trade in the mining or selling of the coal.

Conceding that the clause permitting a consolidation of 2,560 acres is beneficial to the public interests, Alaska now has the best coal-land laws in the United States. She is specially favored over other States and Territories, because she has the same laws they have and the acts of 1904 and 1908 in addition. We may locate unsurveyed coal lands in Alaska, and need only pay a flat rate of $10 per acre; we may consolidate or group our claims and enter 2,560 acres in one body for large enterprises, while in the States no more than 160 acres can be lawfully combined in one entry. Alaska now has, under the old plan of private ownership, the best coal-land laws, with the most valuable antimonopoly protection of any part of the American territory.

Now, that is all the law that Congress has ever passed for Alaska, except, of course, in 1910, Congress passed an act giving the President authority to withdraw public lands for certain purposes. He withdrew all the coal lands in Alaska under that supposed authority. It seems to be doubted by many lawyers whether the President had any authority to make the withdrawal that he did make in Alaska under that act, and some think that if the Supreme Court of the United States ever gets the case before it, it will hold that that withdrawal was void and without any authority of law.

The CHAIRMAN. Do you think that with reference to the first withdrawal?

Mr. WICKERSHAM. I do not think the first withdrawal had any authority of law to support it.

The CHAIRMAN. The act of 1910 did seek to confirm President Roosevelt in making the withdrawal.

Mr. WICKERSHAM. It did seek to confirm it.

The CHAIRMAN. My recollection is that it did.

Mr. WICKERSHAM. My opinion on that matter is of no importance.

When the act of 1908 was passed—and it is the last act specially applicable to Alaska—we had the general coal-land laws of the United States in force in Alaska. In addition we had the act of 1904, which gave authority for the location of unsurveyed public lands as coal lands in Alaska, which no other State or Territory had, and the combination and antimonopoly act of 1908.

Mr. GRAHAM. But those laws in force in the States only had a partial and theoretical application in Alaska. You had none of that land, and while they were supposed to be in force in Alaska they were, in fact, not in force.

Mr. WICKERSHAM. They were in force there to the same extent that they were in force in Utah where the lands were unsurveyed.

Mr. LENROOT. They were applicable to the unsurveyed land in one case that you named here.

Mr. WICKERSHAM. Under the act of 1904 they were applicable to unsurveyed land. Then we have the act of 1908. We have that in addition to the general laws in force in the States, so that Alaska to-day has a better coal-land system of laws than any other State or Territory in the United States. No one can examine the statutes and not say so. The act of 1908 is one of the most wholesome anti-

monopoly laws that was ever written in the statutes. It permits the combination of 2,560 acres, exactly the amount provided for under the bill before this committee. It differs, of course, from the bill before the committee in that it appears to convey the title, but in the patent that conveys the title to the coal land the Secretary is obliged to print as a part of the contract of sale the whole of this act of 1908 with its drastic antimonopoly clauses, and it is provided that if this clause shall ever be violated by the owners of that land the land shall be forfeited to the United States and again become a part of the public domain. Your attention is specially called to the fact that we have at this time in Alaska the best antimonopoly laws that have ever been written with respect to protecting the public from monopoly and frauds in the ownership of coal lands and in the sale of the coal mined from public lands. But, unfortunately, nothing has ever been done under the act of 1908. No patents have been issued, except two—one for 60 acres on Cook Inlet containing low-grade coal and another for 160 acres in southeastern Alaska containing equally low-grade coal. Otherwise the act of 1908 has never been given any effectual action in the Territory of Alaska.

The CHAIRMAN. I was here when the act of 1908 was passed, a member of this committee, and I suppose you were also.

Mr. WICKERSHAM. No; I was not; that was before I came here.

The CHAIRMAN. Anyway, I confess as I heard you read that act, it looks to me like as comprehensive and as good an act as was ever passed.

Mr. WICKERSHAM. There never was a better antimonopoly law passed—it is much better than the one now offered in its place.

The CHAIRMAN. That act was passed six years ago. None of us want to have any of our thoughts tinged with politics—and we do not do so here in this committee, but I would have asked the same question had my party been in power at the time—but why is it that the department has not gone ahead and done something in the past six years? I ask that in perfect good faith. I can not understand why that has not been sufficient justification for them to go ahead.

Mr. WICKERSHAM. Mr. Chairman, I can not answer that.

The CHAIRMAN. Is there any answer to it?

Mr. WICKERSHAM. The Constitution of the United States provides that the President shall take care that the laws of the United States be faithfully executed. They have not been executed. They have been refused execution, and Alaska has been kept in a state of uncertainty and suspense in respect to coal matters all these years. If a vigorous and courageous man had decided the Alaska coal cases years ago as they ought to have been decided, under this antimonopoly law of 1908 our development need never have stopped.

As the representative of Alaska I have heretofore opposed a leasing law, because it was not as effective against monopoly as the act of 1908. But I do not longer intend to stand in the way if we can get as fair security against that evil as that act now gives us. If you make any mistake in a leasing law, you have not lost the lands; you have not lost your control over the situation. You may prevent monopoly in that way, and you may accomplish all that the people of this country want you to accomplish. I am satisfied, Mr.

Chairman, that the people of this country want a leasing bill passed, and I am satisfied that we can not get any other form of relief with respect to these lands in the Territory of Alaska. For that reason I feel obliged to consent to a leasing bill if it can be made to protect the public and the consumers of coal from monopoly and extortion.

I have no doubt that President Wilson wants to do the very best that can be done for Alaska. I do not question his courage or the honesty of his intention to open up Alaska to immediate and proper development without monopolistic advantages to anyone. He promised that in his message to Congress, and I want to assist him, and I know this committee wants to assist him. I know every member of this committee is in thorough accord with the statement of the President in his message, and without any partisanship or bias of any kind I think that every member of this committee intends to do the best that can be done to aid him.

You can not pass a leasing law without you know the situation in Alaska, and to give satisfaction you must meet the situation there in respect to development and at the same time prevent monopoly and extortion in prices.

Mr. KENT. I would like to get in the record here a matter that occurs to me. Referring to that question of the amount of coal per acre in the Bering River field. For instance, if you had a blanket vein 6 feet thick you would have between 5,000,000 and 6,000,000 tons in a square mile, and in a 24-foot vein you would have four times as much, and at the rate of a thousand tons per day, it would take 60 or 70 years to work that out. If you have such volumes of coal there, is it not foolish to make this law whereby a man can store a lot of coal on the acreage basis, whereas it should be considered on the tonnage basis?

Mr. WICKERSHAM. Let me answer that in this way: Four sections in the Bering field in Alaska are equivalent to 16 sections in the State of Illinois.

Mr. MCKENZIE: It is not necessary for anyone to come in there and take the full amount. A man would be foolish to take the amount that would naturally come in his claim. If you have a deposit here inside of these mountains the coal should all be mined at that one operation, to be economical, and then that tract should be included in that one block.

Mr. KENT. I agree with you there.

Mr. LA FOLLETTE. You say the Matanuska field in its characteristics and its vertical veins is the same as the Bering field?

Mr. WICKERSHAM. Substantially so; but it is probably not so badly broken.

Mr. LA FOLLETTE. As to the thickness of the veins, how are they compared to the Bering field?

Mr. WICKERSHAM. They are heavy veins like those in the Bering field.

Now, Mr. Chairman, having in view the state of the public mind and believing that something has to be done by Congress to appease the general suspicion with respect to these conditions in Alaska, I realize that nothing probably can be done, except the passage of a leasing bill.

I represent the people of Alaska, who have problems that they want considered while you are dealing with the Alaska coal-land

leasing bill. They want the coal opened for development more earnestly than people of the United States, if that is possible. We have suffered more than any people in any community in the United States, and it is to our advantage to have this done promptly, but we want a good leasing law.

The act of 1908, I wish to repeat, contains in my judgment the very best antimonopoly law ever written upon the statute books, and if this committee shall fail to keep up to that standard and shall pass a law which will permit a monopoly of these coal fields in Alaska, we will be greatly injured. Monopoly is not altogether a matter of acreage. Monopoly of the coal in Alaska may be accomplished in other ways than by controlling more than 2,560 acres. I notice the bill before the committee attempts specifically to prevent a monopoly of acreage.

The CHAIRMAN. There may be a monopoly of the facilities for getting the coal out.

Mr. WICKERSHAM. Transportation controls coal. It does in Pennsylvania after a hundred years of legislation.

Mr. KENT. The question of topography also figures largely.

Mr. WICKERSHAM. Yes; but I do not think there is anything in topography in either the Matanuska or Bering River field that will compel monopoly. These fields are pretty open to approach. Here is a map of the Bering River field showing the exact locations of all located claims, and an examination by the committee of this map will disclose that there are many gorges and streams where erosion has cut into the field, and where approach is possible from many directions; of course, if you cut the leases into two or three parts and permit lessees to take parts on each side of these approaches they may thereby secure a monopoly of certain areas of the land. Yet there are other areas that can be reached. But you should guard the chance of a single lessee to checkmate other approaches by cutting his leasehold into separate tracts and so locating them as to block others.

The CHAIRMAN. The bill specifically prevents that.

Mr. WICKERSHAM. I was not sure about that.

The CHAIRMAN. Two sections are devoted to that, which I think you will agree is sufficient.

Mr. FRENCH. I would like to have Mr. Wickersham make a further statement on that point and also submit any text he would like to have the committee consider in that connection, because we want to do what he recommends, and I would be glad to have him submit some text.

Mr. GRAHAM. I wish you would go back, Mr. Wickersham, and pick up the thread of the statement that you were making when you were interrupted and finish it.

Mr. WICKERSHAM. What was that?

Mr. GRAHAM. In reference to the antimonopoly features of the plan for working the bill out so as to avoid monopoly.

The CHAIRMAN. Before he leaves the lease question, I want to call his attention to section 3 of the proposed bill, which is as follows:

SEC. 3. That the unreserved coal lands shall be divided by the Secretary of the Interior into leasing blocks or tracts of 40 acres each, or multiples thereof, and in such form as in the opinion of the Secretary will permit the most economical mining of the coal in such blocks, but in no case exceeding 2,560 acres

in any one leasing block or track; and thereafter, subject to any prior valid existing rights, the Secretary shall offer such blocks or tracts and the coal, lignite, and associated minerals therein for leasing, and shall award leases thereof through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, to any person above the age of 21 years who is a citizen of the United States or has declared his intention to become such, or to any association of such persons, or to any corporation organized under the laws of the United States or of any State or Territory thereof.

The CHAIRMAN. Let me add just a word in that regard. It was the thought of the Secretary that in the rich coal fields, in the two known valuable coal fields, in some instances the tracts should be small in area, but it was thought, Judge Wickersham, that an area as large as 2,560 acres should be permitted because in the low-grade coal fields undoubtedly large areas would be required by a concern which could afford to go in and put up their extensive machinery and that they could be induced to do it if given a larger area.

Mr. WICKERSHAM. I have no doubt the area must be large enough to give a coal unit of sufficient size to enable a large plant to be built and to promise work to employees for a reasonably long period of time.

The CHAIRMAN. That would be necessary in order to make it workable.

Mr. WICKERSHAM. But you must not forget that the coal content per acre in Alaska is much greater than the coal content per acre in the fields with which you gentlemen are acquainted.

The CHAIRMAN. Dr. Holmes and the Geological Survey will help us solve that problem.

Mr. WICKERSHAM. The Geological Survey has made accurate reports on it and they may be found in the official reports of the Geological Survey, including photographs of these veins, exact measurements and profiles, and all that, so you can understand it thoroughly.

The CHAIRMAN. And as to tonnage?

Mr. WICKERSHAM. Yes; everything needed is stated there.

The CHAIRMAN. I will say to the gentleman that both Dr. Holmes and Mr. Smith and Mr. Finney and men from the Geological Survey were present at these hearings and will still be here and help us make this bill strong in every way when we take it up section by section.

Mr. FERGUSSON. Let me suggest right there this thought. Would it not be the part of wisdom for us to consider something in the way of indicating certain areas, the amount that may be included of a certain class of coal? I would be glad to second Mr. French's suggestion, so far as I can see now, to have Judge Wickersham submit some data on that line, because he has given vast study to this matter.

The CHAIRMAN. Mr. Wickersham is a member of the committee, and will be here to offer any amendments he may desire.

Mr. LENROOT. I would like to ask him whether he thinks it would be best, instead of having a maximum basis on the acreage, to have it estimated on tonnage?

Mr. WICKERSHAM. I think that is practicable.

Mr. GRAHAM. Would it be possible to estimate how many veins there are?

Mr. WICKERSHAM. Yes; I think so.

The CHAIRMAN. I believe your statement was that only one-fifth had been prospected, and you might get in deep water in estimating the other four-fifths.

Mr. WICKERSHAM. You could estimate the tonnage within a leasehold, though you might not always be able to do that accurately; some of it might be covered.

The CHAIRMAN. Of course the royalty is based on tonnage, anyway.

Mr. MCKENZIE. I believe the proper way of getting at this thing is to allow the Geological Survey Department go up there and plat that ground. Now, then, I do not see how you are going to estimate the tonnage there, because we do not know anything about the amount of coal except what we can see on the surface, and the thought in my mind was this, that the right way to plat that ground so you can extract that coal in the most economical way would be to put up a big plant and that plant could probably take care of 1,000 acres or 2,000 acres, and you would not want to put a two-million-dollar plant where a one-million-dollar plant would do the work, because that would put an added expense on the consumer, and the only way I can see that you can determine that is for the Geological Survey Department to go up there and take the topography, and you can then tell largely the amount of ground to attack to put in one claim that could be worked out economically.

The CHAIRMAN. I may add that section 3 contemplated that, wherein the Secretary was empowered to make an offering of such size and area and quantity as he desired, not above 2,560 acres, and that was estimated from data from the Geological Survey.

Mr. JOHNSON. Would you advise the fixing of these claims to be in a compact body or form and contiguous, or allow them to be of various tracts and separated?

Mr. WICKERSHAM. I do not know that it makes much difference, except if you do not put them in solid compact bodies whoever makes the leases must be very careful not to give the advantage in closing out other lands by making several leases or small tracts of advantageous positions to one person. The committee is just as well qualified to settle that question as I am. Now, I would like to go on further and criticize the bill in some other respects.

The CHAIRMAN. Proceed, Judge.

Mr. WICKERSHAM. I want a bill that is going to accomplish something in the Territory of Alaska, and I am sure the committee does, and I would say, not in the way of criticism of it—it is said in perfect good faith and with the view of giving the committee only the knowledge that I may have acquired from my association with the people up there and my knowledge of the peculiar circumstances—that I have given this matter of a coal-leasing bill in Alaska attention for the past six years, and it is a matter of very grave concern to us. The first section of this bill provides:

That the Secretary of the Interior be, and hereby is, authorized and directed to survey the lands of the United States in the Territory of Alaska known to be valuable for their deposits of coal, preference to be given first in favor of surveying lands within those areas commonly known as the Bering River and Matanuska coal fields, and thereafter to such areas or coal fields as lie tributary to established settlements or existing or proposed rail or water transportation lines: *Provided*, That such surveys shall be executed in accordance with existing laws and rules and regulations governing the survey of public lands.

Mr. WICKERSHAM. I quite agree with that section, although I do not think that the law ought to be so drafted that the leasing must await the surveys. The extension of the rectangular system of surveys over these lands in the Bering River field will take a much longer time than Commissioner Tallman suggested. If these surveys were to be made on a flat country it could undoubtedly be done by a large force of men in the time he mentions, but to have it done in the mountains and gorges and canyons surrounding the Bering River field, in the short season they can work there, will take years where he suggested months. So if you make this bill to await the slow process of surveys it is going to substantially fail in giving any relief.

Mr. GRAHAM. Judge, do you see any necessity for waiting to lease at all? Why could not one unit be surveyed and be offered for lease?

Mr. WICKERSHAM. It could.

Mr. GRAHAM. How long would that take?

Mr. WICKERSHAM. That unit could be surveyed in the time suggested by Commissioner Tallman. Undoubtedly the other units could be surveyed rapidly thereafter and leased, as was suggested by Mr. Brooks. I think the surveys in the Matanuska field could be made more rapidly than in the Bering River field, where the country is badly broken. There is an excessive fall of rain and snow there. The conditions there are such as to prevent rapid survey. I want to call the attention of the committee to that, because we want a workable bill, and if the surveys are to be made over the whole field before any leasing can be done it will hold up development for probably three years more.

The CHAIRMAN. We had that up yesterday. I think you are on a very important part of the bill, and I think it is your wish and the wish of the committee to get something done in the immediate future. We are waiting too long now for some relief, and with that in mind several members of the committee brought out testimony yesterday—I believe it was yesterday—to the effect that the Geological Survey had sufficient topographical maps and other data by which they could prepare a schedule of that area, not rectangular in form, but more in the way of giving topographic conditions and means for attacking the coal. I may not be right about that, but I think the committee is fairly of the opinion that it ought to be changed, so, at least, latitude could be given to them for adopting such preliminary surveys that could be made without waiting for a long period of time.

Mr. WICKERSHAM. Some suggestion has been made here that the surveys made by former entrymen in the Bering River field might be used. That could be done.

The CHAIRMAN. I do not think there is much merit in that, although it was suggested yesterday by Dr. Holmes that in some instances larger sums were expended in making these surveys by other parties than were made by the department.

Mr. WICKERSHAM. I think if you keep track of the expenditures to be made in the extension of the rectangular system of surveys over this identical land you will find those surveys were made at a very moderate cost.

The CHAIRMAN. The committee had no information upon it.

Mr. WICKERSHAM. That is mere suggestion.

Mr. LA FOLLETTE. Do you anticipate there would not be any overlapping of these mines under these surveys made by individuals?

Mr. WICKERSHAM. I think not.

Mr. LA FOLLETTE. You think there would not be any overlapping?

Mr. WICKERSHAM. No; I do not think so.

The CHAIRMAN. By competitive surveys?

Mr. WICKERSHAM. They have all been made officially.

The CHAIRMAN. There has never been any contest?

Mr. WICKERSHAM. No; not that I am aware of.

The CHAIRMAN. They presented maps here?

Mr. WICKERSHAM. I have the maps here. All those surveys were made and approved officially.

The CHAIRMAN. They were approved by the department?

Mr. WICKERSHAM. Yes, sir.

The CHAIRMAN. Would not the Government be subject to criticism by taking up these claims, over which so much controversy has been had, and adopting their lines and maps? That may be a rather nonsensical question, but may that not be so?

Mr. KENT. But will the Government be justified in wasting money in that way?

Mr. WICKERSHAM. If the Government takes them over they certainly ought to pay for them. I would not take another man's property simply because I had the power to do it and not pay for it. The surveys were made in good faith and approved by the Government. But we will not quarrel about that. I do not know any more about that than you do.

Mr. BROWN. With regard to the need for haste, could any operators afford to put their equipment in there before a railroad was built to those fields?

Mr. WICKERSHAM. No.

Mr. BROWN. They would have to wait until a road was made?

Mr. WICKERSHAM. Yes.

Mr. BROWN. That would give us a year or two before the railroad was built, and in a year or two much could be done.

Mr. WICKERSHAM. That is true.

Mr. KENT. They could use the Bering River field there quicker.

Mr. WICKERSHAM. Yes and no. The Bering River field is only from 10 to 25 miles back from the beach. One part of it, the MacDonald claim, runs down to Bering Lake. There is an outlet from Bering Lake to the sea, and scows loaded with coal from this mine can be run out now, so it would not require much of an effort to get that coal out.

The CHAIRMAN. Has the MacDonald claim been canceled?

Mr. WICKERSHAM. It is not canceled. There are only 33 claims there that are canceled, and that is another thing you must notice. Out of all the claims in the Bering River coal field only 33 were canceled.

Mr. GRAHAM. There are more than that.

Mr. WICKERSHAM. Only 33 that are known to have coal on them. There have been many claims canceled that were abandoned.

Mr. GRAHAM. It says here that there are 90 in the Bering River field, 118 in the Mananuska, and a great many are in the lignite field.

Mr. WICKERSHAM. You heard Dr. Brooks testify there are but 35 square miles of known coal areas there, and there are only 4 claims

to the square mile; that is, 140 claims that have any coal on them. Of these 140, I understand that only 33 have been canceled. Dr. Brooks told you very frankly there was a large area of land surrounding this coal field that had been located where he did not think coal existed, but which was located on the theory that coal extended under the land. As to most of these claims, they were given notice of contest and abandoned their claims.

Mr. FERGUSSON. That is the way they got the 561 claims?

Mr. WICKERSHAM. Yes, sir; they are most of them defaulted claims.

The CHAIRMAN. Let us get at that accurately. From the testimony of Secretary Lane on the first day of the hearing, it appears at page 6 of the hearings that in all 561 claims had been canceled; in the Bering field 224 had been canceled, and in the Matanuska 90, and in Cooke Inlet, 118; Admiral Island coal field, 31; Alaska Peninsula coal field, 38; Nome coal field, 13; Fairbanks, 15, and miscellaneous, not shown, 31; in all aggregating 561. You say that of these 224 that were canceled in the Bering River field only 33 of them contain coal?

Mr. WICKERSHAM. That is my information.

Mr. BROWN. I think I asked Dr. Brooks to put in a memorandum showing the status of the claims.

The CHAIRMAN. Yes; I remember; and that is a very valuable suggestion.

Mr. BROWN. Consequently, it can be obtained as soon as the record is printed.

Mr. WICKERSHAM. When the Mondell coal bill was before the House some two years ago, I put in the record a list of coal claims in Alaska on which final payment of purchase price was made and receipt issued. So far as I know all those claims stand as they did then, except the 33 Cunningham claims. I may be mistaken about that. I am calling the attention of the committee to my understanding that there are no coal lands open in the Bering River field, except the 33 Cunningham claims. They are all alive, except the Cunningham claims, and it is suggested that the Cunningham people are on the ground in possession, and will make a fight. I merely call this to the attention of the committee for your information so that you may not be disappointed in the delay arising from that fact, if it be a fact. I may be wrong about that. I think this committee ought to know whether I am wrong or not. I think this committee ought to know whether there are any claims in the Bering River field which can be leased after this bill is passed. Some of these claims have been pending in the department for fourteen years; some of them for eight years, and all of them since November 7, 1906. They are not yet settled. What is the use to pass laws without you can get them executed, without some one will enforce the laws after you pass them; and if there is no coal there to lease, as I asserted in my speech three years ago, in opposition to you at that time. Mr. Chairman, what is the use to pass another law?

The CHAIRMAN. The trouble with us here is that we are proceeding without having specific information, because yesterday I asked Dr. Brooks at great length—it is in the record—as to the amount of coal in the area that was actually tied up, and it developed that there were 8,000 acres, as I now recall, that was tied up. I also asked the

amount of acreage that would be actually subject to lease in the Matanuska field, and you will remember the answers that were given. We first figured it out how much was tied up, and it was different from your present idea. They may be wrong.

Mr. LENROOT. As a result of that discussion, Dr. Brooks or Mr. Tallman agreed to furnish the committee with data as to the claims within the normal coal area here and their status.

Mr. WICKERSHAM. I have here a map showing the location of these groups or claims are yet uncanceled, and you can go on from that It will not take the department long to tell you how many of these groups or claims are yet uncanceled, and you can go on from that basis without any further difficulty.

The CHAIRMAN. The trouble is with us that we do not know what part of these are wildcat locations and what part are within the area. For instance, Secretary Lane stated that in the Bering field there are 224 that have been canceled; in the Bering field 287; in the Matanuska field 90 that were canceled; in the Matunuska field there are 51 now pending; and so on with each. So we have this data, but the fact that some of these claims that have been canceled are outside may tie us up.

Mr. GRAHAM. My recollection is that after the Cunningham claims were adjudicated there was a lull in the excitement, at least. While the Cunningham claims were pending the newspapers and the people kept public attention riveted on them, and after the decision in that case, and before the smoke cleared away, I think there were a great many other claims in the actual area that were adjudicated and no great amount of fuss was made about the adjudication; but I think you will find that more than the Cunningham claims have been adjudicated in the Land Office.

Mr. WICKERSHAM. I hope so. You have some claims there, Mr. McKenzie.

Mr. MCKENZIE. I thought I did once.

Mr. WICKERSHAM. Let me understand. You and your friends have some claims that have not as yet been settled?

Mr. MCKENZIE. Yes, sir.

Mr. WICKERSHAM. They are pending?

Mr. MCKENZIE. Yes.

Mr. WICKERSHAM. How many?

Mr. MCKENZIE. 2,000 acres.

Mr. WICKERSHAM. What other groups have been adjudicated?

Mr. MCKENZIE. I do not know of any in the coal area except the Cunningham.

Mr. FRENCH. You do not know of any that were adjudicated?

Mr. MCKENZIE. They have criminal proceedings against a lot of us, and the Land Office was humane enough, for once, to say it was not fair to settle these other matters until the criminal cases were settled.

Mr. WICKERSHAM. I understand that to be the situation.

The CHAIRMAN. You may be entirely right about it. Let me see if this is the thought: The Secretary is undoubtedly right in stating that 224 were canceled, but the question reverts: What sort of claims were canceled? It is your thought, I understand, that all the claims in the real coal area that were not in the Cunningham group were canceled.

Mr. WICKERSHAM. Yes.

The CHAIRMAN. And the additional ones making up the 224 are wildcat claims that may not have any coal value at all?

Mr. WICKERSHAM. Yes; that is my information.

Mr. GRAHAM. Let me suggest that you take Judge Wickersham's map showing the locations in the actual coal area by groups, such as the MacDonald group and the Stracey group, and make a special inquiry of the Secretary in reference to these particular groups, as to whether or not they have been canceled. The maps will show the actual coal area.

The CHAIRMAN. I think that is very important.

Mr. GRAHAM. Make specific inquiry as to those.

The CHAIRMAN. I think the suggestion is a good one, and if Judge Wickersham will let me have his map we will get up a letter and send it to the Secretary. The committee ought to have this information. If these claims are canceled or just abandoned claims, the committee ought to know it.

Mr. MCKENZIE. I have appealed to the administration and to everybody in this matter, and I bring that to the attention of the committee now, because if we pass another law that does not amount to anything, as other laws heretofore have not, we ought to give up the matter altogether.

Mr. LA FOLLETTE. The Cunningham claims have been adjudicated?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. The committee desires to know what claims outside the Cunningham claims in the known area have been canceled.

Mr. WICKERSHAM. Now, Mr. Chairman, I want to call the attention of the committee to another defect in this bill. In all of the coal bills so far presented it seems that the draftsman is very much in the position of a tailor who is instructed to make a suit of clothes for John Smith, without knowing whether John Smith is 6 or 16 or 60 years old, or whether he is small or large or lean or fat. Speaking specifically, there are in Alaska all varieties of coal, and you cut one suit pattern not only to fit John Smith, but to fit him in all his varieties.

The CHAIRMAN. Would you wish to say that in view of the fact that the areas run from 40 acres to 2,560 acres?

Mr. WICKERSHAM. No. That is not the point. You have provided one method in this bill for leasing all the coal lands in Alaska, and the coals there vary from the lowest grade lignite to the highest grade anthracite. The minimum royalty of 2 cents per ton would permit the Secretary to fix a graduated royalty, undoubtedly, for the different varieties of coal. The objection I make is, that not in your lifetime or mine will there be any demand for low-grade coal in Alaska under lease except in the rarest cases. There may be applications for leases of the higher grades of coal, but the 12,000 square miles of low-grade coal lands in Alaska will be tied up indefinitely under a leasing bill. You will prevent the development of this low-grade coal without you make special provision for it.

The CHAIRMAN. What is your opinion? That we should provide a leasing law for the Bering and Matanuska fields and have another law for the lignite?

Mr. WICKERSHAM. Yes; because under the coal-land laws that now exist in Alaska you can afford to let those great areas of low-grade coal lands go into private ownership with the restrictions contained in the act of 1908. There is so much of it, it is so widespread, it is found in every district in the Territory of Alaska that there can not possibly be any monopolization of these low-grade coal lands. On the contrary, there can be readily a monopolization of the high-grade coals, because they are in such small quantities, and there are only two fields of them. The high-grade coals can be monopolized easily and a situation will be produced even worse than exists in Pennsylvania if you do not prevent it. I only call your attention to that because I think it is a very important matter.

Mr. LENROOT. Has it been ascertained that there are only high-grade coals there?

Mr. WICKERSHAM. No, only one-fifth of the area of Alaska has been surveyed and there may be high-grade coal elsewhere, but you can provide in this bill for the reservation and leasing of the higher-grade coals and make some more liberal provision for disposing of the low grades. Otherwise you will have great areas in a state of reservation for a century or more.

Mr. LENROOT. I only wished to make the distinction between the coals on the record.

The CHAIRMAN. That would bring about a classification of the coals that might delay you in this matter.

Mr. WICKERSHAM. Not at all. As Mr. Brooks told you, you have the classification made in all the areas where you wish to make leases, and you can reserve, under this leasing bill, all of the higher-grade coals discovered or undiscovered. That is all you do with the bill anyway in reserving coal.

Mr. FERGUSSON. Of course, this is a first effort; it is a tentative experiment, and would it not be possible to let it go through with reference to the point you are now discussing, and after it was in operation awhile, after we found it did operate properly, as to the high-grade coal, we could change it if we desired?

Mr. WICKERSHAM. Yes, that could be done.

Mr. KENT. The 10-acre proposition pretty well covers that. It would take several years to mine out several acres of lignite.

Mr. WICKERSHAM. Yes. Now, I want to call your attention to another feature of this very matter we are discussing, and that is the different character of coal found in Alaska. We have a high-grade anthracite, the bituminous varieties, and the lignites. You ought not to pass a bill which will demand as much for the low-grade lignites as you do for the higher-grade anthracites. Of course, the answer is that only a minimum is provided for in the bill, and the Secretary may fix such price as he pleases above the minimum. I think that is a very dangerous power, and it will not work satisfactorily in actual practice.

The CHAIRMAN. Do you think that an exact specified sum ought to be named as to each coal? For instance, that he should charge so much for anthracite and so much for bituminous and so much for lignite?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. Is that not one of the features that defeated the bill two or three years ago?

Mr. WICKERSHAM. I think not.

The CHAIRMAN. Do you not recall the debate on that?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. Do you not remember that that was a very heated part of the debate?

Mr. WICKERSHAM. I do not remember that it came up in that way. I want to call your attention to a letter received from Mr. George Otis Smith which has a bearing on this matter and upon the amount of royalty.

The CHAIRMAN. Before you go into that, if you will pardon me, I want to refer you back to a statement you made a few moments ago. I think you said that within the lifetime of perhaps none of us the low grade coal would not be used. In the main, I assume that is true.

Mr. WICKERSHAM. Yes.

The CHAIRMAN. But, for instance, in your home city of Fairbanks, for factory and domestic purposes the people of your city and in the adjacent territory would undoubtedly use these lignite fields in the immediate future.

Mr. WICKERSHAM. Yes; they will if they can get them.

The CHAIRMAN. And that would be true in other cities.

Mr. WICKERSHAM. Undoubtedly. But what I said to you was that these low grade coals might be allowed to go to patent under the act of 1908.

The CHAIRMAN. Precisely.

Mr. WICKERSHAM. But I do not think under the peculiar situation that the other grades ought to be allowed to do that. I think if a leasing bill is to be drawn that the time has come when we ought to make the best leasing bill we can for the higher grades of coal, so there can not be any monopoly of either the high-grade or low-grade coals in Alaska.

The CHAIRMAN. Due to the fact that the latter will not bear transportation?

Mr. WICKERSHAM. Yes, sir.

Mr. FERGUSSON. Should we not bear this in mind, that all the testimony shows that there is a mere scratching of the coal areas there and not at all a complete ascertainment of the proper classification?

Mr. WICKERSHAM. Yes, sir; Mr. Brooks said that only one-fifth of Alaska has been geologically surveyed.

The CHAIRMAN. Except as to the Bering field. He claims they made a railroad survey of the Bering field.

Mr. WICKERSHAM. Yes. Now, if the committee will permit it, I would like to call attention to this question of royalty. That is a matter we differed on in the bill two years ago. The Mondell bill of two years ago contained provisions for both a maximum and a minimum royalty, a minimum as I remember of 2 cents and a maximum of 10 cents.

The CHAIRMAN. Three cents is the minimum.

Mr. WICKERSHAM. Not less than 3 nor more than 10 cents. The principal objection I made at that time was to the 10 cents maximum and not to the 3 cents. I want to call the attention of the committee

to this letter from Mr. George Otis Smith, director of the Geological Survey, upon the relative values of the different classes of coal, since it greatly affects the matter of royalty which I wish to discuss.

DEPARTMENT OF THE INTERIOR,
UNITED STATES GEOLOGICAL SURVEY,
Washington, January 21, 1911.

Hon. JAMES WICKERSHAM,
House of Representatives.

MY DEAR JUDGE WICKERSHAM: Referring to our conversation of yesterday—

For the purposes of classification and valuation the coals on public lands are divided into four grades:

(*a*) Anthracite, semi-anthracite, coking, and blacksmithing coals;

(*b*) High-grade bituminous non-coking coals having a fuel value of not less than 12,000 B. t. u. on an unweathered air-dried sample;

(*c*) Bituminous coals having a fuel value of less than 12,000 B. t. u. on an unweathered air-dried sample and high-grade subbituminous coals having a fuel value of more than 9,500 B. t. u. on an unweathered air-dried sample;

(*d*) Low-grade subbituminous coals having a fuel value below 9,500 B. t. u. on an unweathered air-dried sample and all lignite coals.

For the purpose of determining the price at which coal lands shall be sold the following valuations are put on these different grades of coal. These prices represent the value of the coal in the ground, and are based on a comprehensive study of coal-land values throughout the country:

Sale valuation per ton of coal in ground.

Grade:	Cents.
Class A	2 to 3
Class B	1 to 2
Class C	½ to 1

In the valuation of the land underlain by the lowest grade of coal no increased price is put on the coal in the ground, the price being fixed at the minimum of $10 per acre allowed by law.

These valuations can be reduced to percentages as follows. Placing the royalty value of the highest grade coal at 100 per cent, the following table is obtained for your purpose:

Coal royalty expressed in percentages of highest grade.

Grade:	Percentage.
Class A	100
Class B	33⅓ to 66⅔
Class C	16⅔ to 33⅓

The methods of land classification and valuation in use by the Geological Survey are described in Bulletin No. 424, which has been mailed you under separate cover. I am also sending you an article on "Coal," by E. W. Parker, from the volume on Mineral Resources of the United States for 1907. This contains a statement of the estimated coal reserves for each State, as well as statistics of production. I call your special attention to the map accompanying this article. The papers on conserving the mineral resources, prepared by members of the Geological Survey, are contained in Bulletin No. 394. Copies of the Alaska publications on coal are also sent to you. These include "The coal resources of Alaska (22d annual report), as well as Bulletins 277, 284, 289, 327, 335, and 442-A. These include all the publications of this bureau in stock which deal primarily with Alaska coal. The coals of the Cape Lisburne region are described in Bulletin 278. This report is, unfortunately, out of stock, but you can probably secure a copy from the House Document Room.

Very truly, yours,

GEO. OTIS SMITH,
Director.

P. S.—I also send you a copy of Mr. Parker's coal report for 1908 and coal press bulletins covering 1909 and 1910.

Mr. KENT. Are those values in royalty based on the price per ton or on an acreage basis?

Mr. WICKERSHAM. I do not know.

Mr. KENT. Dr. Holmes, could you tell us? Upon what basis do they figure those royalty values in that statement?

Dr. HOLMES. I could not answer as to that.

Mr. KENT. Do you know anything about what the leasing charges are among private individuals in this country—for the best anthracite, for instance, in Pennsylvania?

Dr. HOLMES. The highest I know of is 75 cents a ton, but more usually it is from 15 to 25 cents per ton royalty on anthracite coal.

Mr. WICKERSHAM. Now, Mr. Chairman, I have called your attention to this letter so that you may get exact official data with respect to the values of Alaskan coals. Assuming semianthracite coking blacksmith coals at 100 per cent, the other classes vary downward—class C as low as 16⅔ per cent, while the low-grade subbituminous coals and the lignites are below 16⅔ per cent.

Mr. KENT. I thought the lignites were from 16⅔ up to 33.

Mr. WICKERSHAM. That is class C bituminous coals. The lignites he does not give. They are below class C.

The CHAIRMAN. That letter does not purport to give the royalty that should be charged?

Mr. WICKERSHAM. Not at all; but there is another document here that does, to which I want to call your attention.

Mr. KENT. I wonder if Dr. Holmes could explain exactly what that table means. Does that mean that 6 tons of low-grade bituminous is only equal in thermal units to 1 ton of best anthracite?

Dr. HOLMES. It could not mean that, sir.

Mr. WICKERSHAM. I think that is perfectly plain. He says "coal royalty expressed in percentages of the highest grade," etc.

Mr. KENT. I thought you said it had nothing to do with royalties.

Mr. WICKERSHAM. No; this letter is offered as a basis of coal royalty based on the character of the coals. That character is, of course, based on the value of the coal, and my purpose is to show the committee that different rates of royalty must be charged on different kinds of coal.

Mr. KENT. I do not know what it means; that is all, Mr. Wickersham.

Mr. WICKERSHAM. I should not like to undertake to explain what the head of the Geological Survey means when he writes about coal lands, because we must assume that he knows all about it.

Mr. KENT. I do not doubt that he does.

Mr. WICKERSHAM. What I want to call your attention to is that these coal lands grade from less than 16⅔ up to 100 per cent in value when you begin to consider royalty rates upon them. Now, your bill does not provide for anything of that kind. The bill provides that the lessee shall pay not less than 2 cents for low-grade coal, while another man may have the highest grade coal, of six times greater value, for the same amount——

The CHAIRMAN. Oh, I do not think you want to make that statement.

Mr. WICKERSHAM. Wait a moment. I understand what the bill says exactly. It leaves the matter entirely to the Secretary.

The CHAIRMAN. That is right.

Mr. WICKERSHAM. But I think that puts the Secretary in a bad position. I think that can be corrected and I think the committee ought to take steps to correct it. I think there ought to be some

graduation of royalty prices, even if it is nothing more than a statement in the bill requiring the Secretary to fix different rates upon these different grades of coal in Alaska. That will protect him. Something ought to be done. I am looking forward to what I think is going to make trouble in this matter and trying to persuade you to correct it.

The CHAIRMAN. Your view is that the matter of fixing the different rates of royalty—which, of course, can go as high as the Secretary cares to go and as low (down to 2 cents a ton) as he cares to go—ought to be affirmatively fixed in this bill?

Mr. WICKERSHAM. With a minimum——

The CHAIRMAN. Yes.

Mr. WICKERSHAM. I think 2 cents a ton is probably too high on the lowest grade coal. I think this statement of Mr. Smith is correct. If the lower grade coals are worth at least 2 cents a ton the higher grade coals are worth at least eight times as much, or 16 cents as a minimum. And if you are going to fix 2 cents as the lowest rate for lignite you ought at least to make 16 cents the lowest or minimum rate for the highest grade anthracite.

The CHAIRMAN. If you want to take the responsibility of drawing an amendment of this kind—of course, this is Judge Wickersham's country that we are legislating for. He represents this Territory and as far as I am concerned I should be very glad to have whatever amendments he desires to offer brought over here and let us thresh them out, and I would go far in carrying out his wishes. I know he has the interests of Alaska at heart and I know that he wants to get a bill that will be workable, and those are about the only two things that I have in mind.

I hope no one thinks that the mere fact that my name is on the bill has anything to do with it. I merely did it because I happened to be chairman of the committee—dropped in the basket a bill that Secretary Lane and other gentlemen had prepared. So I have no pride in this at all other than the fact that it is rather amazing to me that Judge Wickersham should now think we ought to put the Secretary's head in a vise and make it mandatory for him to get a certain price for the coal with so little information before the committee upon which to act, when he so recently advocated unlimited authority in the railroad bill. We all know that the authority granted in the railroad bill was very unusual and was unlimited as to giving power to the Chief Executive to act. However, with the light we have on this coal business I doubt if anything like a fixed maximum or any minimum that is too high would be workable or could be passed through the House.

Now, we have had some experience to guide us in this. The Mondell bill, which was passed world without end in the House, attempted to fix the exact prices minimum and maximum; and it was done for the purpose of relieving the Secretary of the excitement and noise of having to fix it and subjecting him to criticism. The House—of course, you gentlemen know what happened.

Mr. WICKERSHAM. Of course, I did not believe in the Mondell bill—that is, in that clause which fixed a maximum. I do not now. I do not want the House to fix a maximum upon any royalty

in this bill. I think it is wrong. But you are going to pass a bill here now which will enable the Secretary to grant favors. You are going to pass a bill which will enable him——

The CHAIRMAN. I notice we have three calls from the House, and I presume we may as well take a recess.

Mr. LENROOT. Before we do so I want to ask Mr. Wickersham one question. Might not the same royalty upon low-grade coal in the Bering field and upon a much higher-grade coal in the Matanuska field be entirely just?

Mr. WICKERSHAM. Upon the same class of coal?

Mr. LENROOT. No, different grades; one costing much more to get it to market than the other.

Mr. WICKERSHAM. Oh, yes; undoubtedly. And that is why I am not in favor of fixing a maximum. I am in favor of fixing only the minimum.

Mr. LENROOT. The same thing would apply if you compelled a royalty upon the same grade?

The CHAIRMAN. In the absence of objection, we will try to meet here at 1.30.

A recess was thereupon taken until 1.30 o'clock p. m.

AFTER RECESS.

The committee reassembled after the expiration of the recess.

The CHAIRMAN. Judge Wickersham, you may proceed with your statement.

STATEMENT OF HON. JAMES WICKERSHAM, A DELEGATE IN CONGRESS FROM THE TERRITORY OF ALASKA.

Mr. RYAN. Mr. Chairman, I would like to ask Judge Wickersham a question.

The CHAIRMAN. All right.

Mr. RYAN. In view of the testimony I gave yesterday about the Bering River coal, Dr. Holmes and yourself being here at the time—I testified as to the surveys in the Bering River coal fields, the Government surveys, the rectangular surveys, that those surveys were made in the smallest division adopted by the Land Office, which is 40 acres; some of the surveys, as the survey map indicated which I showed you yesterday, and that was the official map, and I suppose this map (indicating map on committee table) is also official——

Mr. WICKERSHAM (interposing). No; that is not official.

Mr. RYAN. I showed you the official map which was used by the Land Office of the different groups of claims; and they are all surveyed, as this map shows, north and south, the rectangular survey, and the smallest division surveyed was 40 acres. Some of them were twice as long as others; others were perfectly square. But I showed that there would be some small parcels of land or fractions, where they did not fit in, but to our knowledge they were on nonrectangular lands.

The question I would like to ask you is, you spoke about 40-foot veins in the Bering River field. Now, I have very good knowledge of that field; I have been over nearly every foot of that field, I think—

at least, in the center of the field; I have not been over on the extreme eastern edge—and I did not see any such coal measures as that in the field.

Now, Dr. Holmes is here; he has had an official investigation of the field made, and it was re-made, to some extent, before the naval coal was taken out—and I want to ask you, Judge Wickersham, if you could base a bill to be enacted into law on coal measures of that size? If coal measures of that size exist, 40 feet of coal, an acre of that kind of coal would give a tremendous tonnage. And I take it for granted that Judge Wickersham wants to pass as fair a bill as the committee do; and that is, a bill that will be practicable, and that can be operated under.

Mr. WICKERSHAM. I may not have been very accurate in my statement. It may be that the vein is not a single vein of 40 feet in thickness, but that in different veins upon the same tract there is that much coal.

Mr. RYAN. But in 160 acres?

Mr. WICKERSHAM. Well, in different layers there may be, one above the other.

Mr. RYAN. Yes; but in 160 acres on one claim?

Mr. WICKERSHAM. Yes.

Mr. RYAN. Well, I do not think anybody knows about that, Judge Wickersham. I do not think there has been any investigation that has been made by which anybody can say yes or no to that assertion; but I thought you meant there were veins there running 40 feet thick in considerable number; and that would give the committee the impression that the tonnage and acreage of the Bering River coal fields was of very considerable extent.

Mr. WICKERSHAM. I certainly intended to give them that idea.

Mr. RYAN. Well, the fact of the matter is that it is positively unknown what the extent of the veins is; as Dr. Brooks will tell you, that is guesswork.

Mr. WICKERSHAM. Dr. Brooks will tell you that he only knows what he sees.

Mr. RYAN. Yes.

Mr. WICKERSHAM. But he will tell you that some of these veins are of very great thickness, and some are of great extent; they are superimposed one upon another.

Mr. RYAN. Before we had the Government investigations made there were surveys by private capitalists; and a very complete superficial survey was made by the Geological Survey of these veins and their thicknesses, and the result is given in these reports.

Mr. WICKERSHAM. Well, those are the reports I had reference to when I made the statement.

Mr. RYAN. Now, Dr. Storrs made an examination of the Cunningham group for the Morgan and Guggenheim people, I believe; and that report has been made public, and in it Dr. Storrs estimates the amount of coal in the 33 claims. I do not know whether Dr. Storrs was prejudiced; he was giving that to capitalists as his best opinion as to what coal the 33 claims contained.

Mr. FERGUSSON. How thick did he represent any of the veins to be?

Mr. RYAN. I could not say just at the moment.

Mr. WICKERSHAM. That is all in the report of the Geological Survey.

Mr. RYAN. The committee ought to understand this clearly. I do not think Judge Wickersham meant to give the committee the idea that he is a geologist and a coal expert and had been to the Bering River coal fields and had seen these veins and could tell their thickness from observation. I have been there and have seen them; but you have got the report of the Geological Survey and of Dr. Holmes, of the Bureau of Mines, who have made a governmental investigation of the field, and then made another investigation two years ago when the naval coal was taken out. Three of the best geologists, I suppose, that the Bureau of Mines could get were sent up to the fields to go ahead in the actual physical extracting of the coal; and they went over the fields to look at the different veins and lay out where the naval coal should be extracted from; and that report, I suppose, is at your service, and that ought to give a pretty fair idea of what the Bering River fields are. There have been various opinions on the subject, but these are final. My opinion is that it is an unknown question yet, both as to the quantity and the quality of coal the fields contain.

Mr. WICKERSHAM. But I have been in the Bering River fields. Of course, I am not a geologist, and my examination was cursory. I do not pretend to say anything about the content of the mines there.

Mr. RYAN. I do not mean in that way; but I mean you did not go through there and go in the different veins with any idea or purpose of purchasing some of the veins, or being interested in the field?

Mr. WICKERSHAM. No; I took the Geological Survey reports; and the committee is able to get those reports.

Mr. RYAN. I knew you did not want to give the committee the idea that these 40-foot veins were a common occurrence in the Bering River field.

Mr. WICKERSHAM. Well, I have a large idea of the area and contents of these fields; I think there is a large coal content there.

Mr. RYAN. There might be, and then again there might not be.

Mr. WICKERSHAM. I think the record is perfectly clear on that.

Mr. BROOKS. Mr. Chairman, if you act on the suggestion I made yesterday and have the slides from the Bureau of Mines and the Geological Survey explained by Dr. Martin, he will very shortly give you the best information that can be had, in my judgment, on all these matters. He is the man who went all over that field, and had a climb up there to places where a goat could not go.

The CHAIRMAN. Are those the slides that are in the Senate Office Building? If so, I think it would be a good idea to look at them.

Mr. WICKERSHAM. Mr. Chairman, I conceded rather hastily this morning that if any mistake was made in the preparation of this bill it might be corrected hereafter.

To some extent that is true. I do not want that concession to apply, however, to the high-grade fields in the Matanuska and Bering River regions; because if you make a mistake in this bill, or make a bill that is bad, and indeterminate leases are entered into under it, for 20, 40, or 60 years, you will have great difficulty in correcting that mistake.

I understand that there is some thought on the part of the committee of making a lease which may be corrected in some of its

details at stated periods of 20 years. That is a matter you will have to be very careful about. If Congress once passes this law, and if a lease is made under the law, the lease will mean just what it says upon the face of the law and the lease; and both the law and the lease become parts of the Government's contract with the lessee. Not only is that true, but other laws of the United States in force at the same time may become a part of that contract and bind the United States.

Mr. LENROOT. What kind of laws do you mean?

Mr. WICKERSHAM. The coal-land laws and any other law which is in the statutes and in view of which it may be made.

Mr. LENROOT. You would not say that any general law of the United States becomes a part of the contract, would you?

Mr. WICKERSHAM. No; not unless it has such specific reference to the contract itself that it becomes fairly a part of it.

Mr. SINNOTT. Judge Wickersham, what code are you working under in Alaska now?

Mr. WICKERSHAM. The Code of 1900; the code passed by Congress in 1899 and 1900.

Mr. SINNOTT. You were working under the Dregon laws at one time, were you not?

Mr. WICKERSHAM. Yes; and our codes are substantially a reenactment of the Oregon Code, with only slight modifications.

Mr. SINNOTT. That is, the new Alaska Code is based on the Oregon Code?

Mr. WICKERSHAM. Yes. Now, Mr. Chairman, there is no question that the law under which leases will be made becomes a part of the lease and contract, and you can not change it. I do not think this committee ought to be under any misapprehension as to that; when that lease is once made under this bill of those coal fields (and the fields are not large, and a reasonable amount of those fields can be made hereafter to control the whole of them), you can not change the lease or the terms of the act governing it, unless you have specifically reserved the right to do so in the leasing law.

The CHAIRMAN. Or on the face of the contract.

Mr. WICKERSHAM. Now, that brings up another question. I notice that there is very little detail in this bill with reference to the terms of the leases to be executed. The law, I think, is somewhat vague in that respect.

I assume that the purpose of the law is to give the Secretary of the Interior the right to make a lease and to put into the lease such terms as, in his judgment, he thinks ought to go in there. I do not think you say that clearly in this bill. But if you do, you say to the Secretary, "Here are the coal lands of Alaska; with one or two very slight limitations, you may go ahead and make leases at your pleasure. You may make a lease to John Jones for one price; you may make a lease to John Smith for another price, and to this man at a third price. You are not limited in any of the details in making that lease; you may do whatever you please; the Government of the United States trusts the whole leasing plan to you."

He will have power under this law to do substantially as he pleases in the matter of making leases, with only one or two limitations; he can not make the lease for a royalty of less than two cents, and it is

an indeterminate lease; of course, that is fixed; and the Secretary probably could not grant a limited term of lease. But there are no other terms of the lease provided for in the bill.

Such a power will leave the Secretary open to criticism, because he will make different kinds of leases with different terms to different people. There will be much criticism unless you are more specific in the power you impose upon the Secretary.

The chairman this morning criticized me for being willing to give the President of the United States substantially unlimited power in the building of a railroad in Alaska, while at the same time I desired to limit the power of the Secretary of the Interior in making coal leases in Alaska.

But in the matter of the Government railway in Alaska, there was one single object and one single purpose to be attained by the passage of the law; there was substantially one single railroad to be built; it was limited to a thousand miles. And I think we were right in giving the President substantially unlimited power in that matter.

But here is a different proposition; here are many leases, to be made under many different circumstances, in many different parts of the Territory; and many different questions will enter into the problem.

And among them is this one of the varying terms of the lease. Now, somebody may ask, "Do you want to put these terms into the law?" And I answer, "Yes." I can draw a lease—any lawyer can draw a lease—which can be embodied in the law, and which will leave very little to the Secretary of the Interior to determine. That would guarantee to every citizen who goes to the department to get a lease that he would receive fair treatment; it would guarantee to every citizen who makes a lease the same terms that every other citizen making a lease gets; it would guarantee to him the same price that every other citizen gets—with such difference, of course, as ought to be made and which could be provided for by a separate section of the bill. That is the law in many States where they lease lands; that is the law in Minnesota, for example.

The CHAIRMAN. If you will pardon the interruption, Judge Wickersham, do you not think that when the Secretary of the Interior, pursuant to the authority given him by this bill, blocks off this area up there, having before him the information gathered by the Bureau of Mines and the Geological Survey; and after he arranges these blocks and schedules as intelligently as he can, subject, of course, to some errors or mistakes which would naturally creep in; and after he fixes a rate of royalty as equitably as he can with the information before him, furnished by the Geological Survey and the Bureau of Mines; and when he prints a schedule and advertises that at public offering, and receives competitive bids which will determine priority and correct any errors of undervaluation that he may have made as to the royalties, by means of bonuses—do you not think that that leasing has been safeguarded as much as it can be safeguarded?

Mr. WICKERSHAM. I believe that if the present Secretary continues in office the Government would get fair treatment, and I think the lessees would. And I do not mean to say now that any other Secretary would not do the same thing. But it is a question of favor; very largely it comes down now to the question of favor in connection with leasing these public lands.

The CHAIRMAN. I do not agree with you about that at all, because the Secretary is compelled by this bill to publicly advertise for bids for leasing, and the amount of bonus above the royalty will determine the best bids, so that in no case would the Secretary be subject to that criticism.

For instance, in my own State of Oklahoma, where we have a great deal of coal and oil lands to be leased, they pursue that identical plan. The Secretary regulates the amount of acreage to be leased; he regulates the rental or royalty value. He then asks for competitive bids to determine who shall have the leases. In that way, if he has underestimated the amount of royalty that should be paid, that will stimulate bidding and bolster up the amount of bonus, so that he can get the highest amount possible for the lease. In that way the plan really avoids the criticism you refer to, as I believe, and really will take from the Secretary that excitement and scandal that might otherwise occur, even though not well directed.

Mr. WICKERSHAM. Of course, criticism is often not well directed.

The CHAIRMAN. I agree with you about that; a great deal of it is not well directed.

Mr. WICKERSHAM. It is not well directed, but it has the same sort of force that has impelled you gentlemen to pass a leasing law for Alaska when we already have the best coal-land laws there, I think, that there are in United States territories.

The CHAIRMAN. Well, let us get down to that proposition. I probably am not at all in disagreement with you about that act of 1908. That appears to be a good law, to have been well drawn and safely arranged. But I do not believe that any considerable part of either branch of Congress, or the President, or any considerable part of the citizenship of Alaska or of the country, would even talk about the withdrawal of the embargo that is now laid on the disposal of those lands and letting that law take effect. And where does that leave you? We have the lands all withdrawn from entry now. That leaves it up to Congress to deal with the subject as intelligently and as patriotically as they can and pass some law that will release the people of Alaska and let them go on and work those coal lands in some way.

Mr. WICKERSHAM. I agree with you on that, Mr. Chairman.

The CHAIRMAN. I think that is a fair statement of the situation as we have it to-day.

Mr. WICKERSHAM. Mr. Chairman, I would like to put into the record a form of lease, which is found in section 2491 of the Laws of Minnesota, relating to State mineral lands. It seems to be a standard form of lease, and it may give the committee my idea about what ought to go into this leasing bill.

The CHAIRMAN. Is it a form of lease under which coal lands are leased?

Mr. WICKERSHAM. No; it is a form of lease under which iron lands are leased by the State of Minnesota.

The CHAIRMAN. Would that be fairly applicable to these coal-land leases?

Mr. WICKERSHAM. I think so; because I am going to supplement that by asking permission to put in the record some coal-land leases along with it for the benefit of the committee. I think they offer

substantial practical ideas of such a character that you ought not to pass them by unnoted.

The CHAIRMAN. Unless there is objection, the Minnesota form of lease will be inserted in the record.

Mr. LENROOT. Is this lease that you now have, Judge Wickersham, incorporated in the Minnesota law or merely made under that law?

Mr. WICKERSHAM. It is incorporated in the law. [Handing paper to Mr. Lenroot.]

Mr. SINNOTT. I would like to suggest, Mr. Chairman, that the law itself go in which provides for those leases; so that the committee can see whether there is any latitude or discretion allowed the executive officer executing the lease on behalf of the State.

The CHAIRMAN. He says that that is the law.

Mr. WICKERSHAM. Yes.

Mr. LENROOT. Why not let the whole law on the subject go in; it is only a few pages?

The CHAIRMAN. Unless there is objection the Minnesota law governing the leasing of mineral lands belonging to the State will be inserted in the record at this point.

(The laws in question are as follows:)

THAT PORTION OF CHAPTER 40 OF THE REVISED LAWS OF MINNESOTA, 1905, PERTAINING TO THE LEASING OF MINERAL LANDS BELONGING TO THE STATE.

RESERVATION OF MINERALS.

SEC. 2483. The State hereby reserves for its own use all the iron, coal, copper, gold, and other valuable minerals and all water powers in or upon all lands which now, or hereafter may, belong to it by virtue of any act of Congress: Provided, that this reservation shall not apply to lands granted or contracted to be conveyed by the United States or by this State to aid in the construction of any railroad. (As amended Gen. Laws, 1909, chap. 109.)

CERTIFICATE OF SALE, PATENTS, ETC.—RESERVATION.

SEC. 2484. When any such land is sold, granted, conveyed, or transferred in any way, the certificate of sale, patent, or other instrument of transfer shall state that such sale, grant, conveyance, or transfer does not include any right, title, or interest in or to any iron, coal, copper, gold, or other valuable minerals which may be in or upon such land, and that all such minerals are reserved by the State for its own use; but no instrument shall be effective to transfer any right, title, or interest in or to any such minerals, notwithstanding the failure of the proper officer to insert such statement.

DISPOSITION OF MINERALS RESERVED.

SEC. 2485. All minerals in or upon lands which have been or may be sold, granted, conveyed, or in any way transferred by the State shall remain subject to sale, lease, or contract by the State, upon the same terms and conditions as are minerals upon lands belonging to the State; and the State, and all persons claiming under it, shall have the right to enter upon such lands, and to prospect for, mine, and remove such minerals, and for such purpose to construct all necessary roads, buildings, and improvements thereon, including machinery for mining or removing such minerals. All such minerals shall be disposed of by the auditor in the same manner and on the same terms as minerals on lands belonging to the State.

PROSPECTING PERMITS—LEASES.

SEC. 2486. The auditor may execute permits to prospect for iron ore upon lands belonging to the State and leases for the mining of such ore, subject to the conditions hereinafter provided.

APPLICATION FOR PERMIT—PAYMENT.

SEC. 2487. Applications for permits to prospect for iron ore shall be presented to the auditor, either by the applicant in person or by mail, and shall be in such form as the auditor may prescribe. The application shall describe the lands to be embraced in the permit, which shall consist of contiguous descriptions, and shall not exceed in the aggregate 160 acres, unless some of the descriptions are fractional subdivisions, in which case the acreage may exceed that number. The auditor shall indorse upon each application the exact time of presentation, and shall preserve the same in his office. Before any permit shall be granted, the applicant shall pay to the State treasurer $25; and the first applicant who either tenders said sum to the auditor, or pays it to the treasurer on the order of the auditor, shall be entitled to receive a permit.

APPLICATIONS AT SAME TIME.

SEC. 2488. When two or more persons apply for a permit for the same land at the same time, the applicant who bids the largest sum therefor shall receive a permit for such land. "Persons applying at the same time" shall be construed to mean all persons who present applications at the office of the auditor within the same minute, or who at the same time stand in line in said office, and forthwith advance and present applications. All applications received by the same mail delivery shall be deemed to be made at the same time. When two or more such applications are received by mail at the same time the auditor shall fix a time at which such permit will be offered at his office to the highest bidder among such applicants, and shall send notice by registered mail to each of them at least ten days before such time. All such applicants may attend at such time and place and bid for such permit, or may submit bids therefor to the auditor by registered mail, each bid so submitted to be accompanied by certified check for the amount thereof; but no such bid shall be considered unless actually in the hands of the auditor at the time and place fixed. If any application is received by mail at the same time when any personal application for such permit is received the proceedings shall be the same as when two or more applications are received by mail at the same time, and all such applicants shall receive notice and be entitled to bid therefor.

RIGHTS UNDER PERMIT.

SEC. 2489. The holder of any such permit shall have the right to prospect for iron ore on the land described therein for one year from the date thereof and no longer; but no ore shall be removed therefrom until a lease has been executed. No permit for the same land shall be issued to the same person for two years in succession.

MINING LEASE.

SEC. 2490. At any time prior to the expiration of any prospecting permit, the original holder, or any assignee thereof, shall have the right to receive from the auditor a mining lease, which shall bind the State and the person to whom it shall issue to the mutual observance of the obligations and conditions thereof.

FORM OF LEASE.

SEC. 2491. The lease provided for in section 2490 shall be as follows:

This indenture, made this —— day of ———, 19—, by and between the State of Minnesota, party of the first part, and ———, part— of the second part;

Witnesseth, that the party of the first part, for and in consideration of the sum of one hundred dollars to it in hand paid by the part— of the second part, being the first annual payment hereinafter provided for, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and conditions hereof, to be kept and performed by the part— of the second part, does hereby lease and demise unto the part— of the second part, for the term of fifty years from and after the —— day of ——, 19—, the following-described land, situated in the county of ———, in the State of Minnesota, to wit: ———; which premises are leased to the part— of the second part for the purposes of exploring for, mining, taking out, and removing the merchantable shipping

iron ore found on or in said land, together with the right to construct or make such buildings, excavations, openings, ditches, drains, railroads, wagon roads, and other improvements upon said premises as may be necessary or suitable for such purposes. The party of the first part reserves the right to sell and dispose of under the provisions of law now or hereafter governing the sale of timber on State lands, all the timber upon the land hereby leased, and reserves to the purchaser of such timber, his agents, and servants, the right at all times to enter thereon, and to cut and remove any and all such timber therefrom, according to the terms of the purchaser's contract with the State, and without let or hindrance from the part— of the second part; but such purchaser shall not unnecessarily or materially interfere with the mining operations carried on thereon. And the party of the first part further reserves the right to grant to any person or corporation the right of way necessary for the construction and operation of one or more railroads over or across the land hereby leased, without let or hindrance from the part— of the second part; but such railroads shall not unnecessarily or materially interfere with the mining operations carried on thereon. And the party of the first part agrees that the party— if the second part shall have the right to contract with others for the working of such mines, or any part thereof, or for the use of such land, or any part thereof, for the purpose of mining iron ore with the same rights and privileges as are hereby granted to the part— of the second part.

The part-- of the second part hereby covenants and agrees with the party of the first part that the part-- of the second part will, on or before the twentieth day of April, July, October, and January in each year, during said term, or during the period this lease continues in force, pay to the treasurer of said State, for all the iron ore mined and removed from said land during the three months preceding the first day of the month in which such payment is to be made, a royalty of twenty-five cents per ton; each ton to be reckoned at twenty-two hundred and forty pounds. The part-- of the second part, at the time of such payment, shall transmit to the auditor of said State an exact and truthful statement of the amount of iron ore removed during the three months for which such payment is made. The iron ore so taken by the part-- of the second part from said land shall be weighed by the railroad company transporting the same from said land; and the part-- of the second part shall transmit to said auditor monthy statements showing the aforesaid weights. Such weights shall prima facie determine the quantity as between the parties, but the party of the first part shall have the right at any time, and in such manner as it may see fit, to inspect, review, and test the correctness of the railroad company's scales and of the aforesaid weights; it being understood that any errors in these respects, when ascertained, shall be corrected. The party of the first part shall have the right to enter upon and into said premises at any time, and to inspect and survey the same, and to measure the quantity of ore which shall have been mined or removed therefrom, not unreasonably hindering or interrupting the operations of the part-- of the second part. And the part-- of the second part further covenants and agrees that within five years after the completion of a railroad within one mile from said land there shall be mined and removed therefrom at least one thousand tons of iron ore, and that thereafter there shall be mined and removed therefrom at least five thousand tons annually, and that in case the part-- of the second part shall not annually remove from said land five thousand tons, as above provided, the part-- of the second part shall pay to the said State treasurer annually a royalty of twenty-five cents per ton on five thousand tons, which payment shall be made quarterly as hereinbefore specified. And the part-- of the second part further covenants and agrees that up to the time when the first one thousand tons is required to be mined and removed, as hereinbefore provided, the part-- of the second part shall on the first day of August in each year pay to the State treasurer the sum of one hundred dollars. And the part-- of the second part further covenants and agrees as follows: That during said term the part-- of the second part will pay all taxes, general and specific, which may be assessed against said land, and the improvements thereon, and the iron ore product thereof, and any personal property at said mines, in all respects as if said land were owned in fee by the part-- of the second part; that the part-- of the second part will open, use, and work said mines in such manner only as is usual and customary in skillful and proper mining operations of similar character when conducted by the proprietors on their own lands, and in such manner as not to cause any unnecessary or unusual permanent injury to the same, or inconvenience or hindrance in the subsequent operation of the same, and will deposit all earth, rock, and other

useless materials or rubbish at such places and in such manner as will not embarrass such subsequent operation, and that upon the termination of this lease the part-- of the second part will quietly and peaceably surrender the possession of said land to the party of the first part.

Provided, however, That the part-- of the second part shall have the right at any time to terminate this lease in so far as it requires the part-- of the second part to mine ore on said land, or to pay a royalty therefor, by delivering written notice of such termination to the state auditor, who shall, in writing, acknowledge receipt of such notice, and this lease shall terminate sixty days thereafter; and all arrearages and sums which shall be due under this lease up to the time of such termination shall be paid upon settlement and adjustment thereof by the part-- of the second part.

Provided, further, and this lease is granted upon the express condition, that if any annual payment, or any payment for royalties, or any part of any such payment, shall remain unpaid after the expiration of sixty days from the time when the same was payable as herein provided, or in case the part-- of the second part shall fail to perform any of the covenants or conditions herein expressed to be performed by said part-- of the second part, then it shall be the duty of the State auditor to cancel this lease, first having given to the part-- of the second part at least twenty days' notice in writing thereof, whereupon the party of the first part shall reenter and again possess said premises as fully as if no lease had been given to the part-- of the second part, and the part-- of the second part and all persons claiming under such part-- shall be wholly excluded therefrom.

It is mutually agreed that upon the termination of this lease, whether by act of either party or by limitation, the party-- of the second part shall have ninety days in which to remove all engines, tools, machinery, railroad tracks, and structures placed or erected by the part-- of the second part upon said land; but the part-- of the second part shall not remove or impair any supports placed in said mines, or any timber or framework necessary to the use or maintenance of shafts or other approaches to the mines, or tramways within the mines. The party of the first part reserves, and shall at all times have, a lien upon all ore mined, and upon all improvements made by the part-- of the second part upon the premises, for any unpaid balances due under this lease.

The covenants, terms, and conditions of this lease shall run with the land, and be in all respects binding upon all sublessees and grantees under the part-- of the second part.

REENTRY ON DEFAULT.

SEC. 2492. The State auditor is hereby empowered in case of default or failure on the part of the person obligated thereby, to fully comply with the covenants and conditions of the lease described in § 2491, to at once enter upon the premises described therein and take possession of the same.

PERMITS, LEASES, AND ASSIGNMENTS—FILING—COPIES.

SEC. 2493. The assignment of any prospecting permit or mining lease shall be signed by both parties, executed in the presence of two witnesses, and acknowledged, and the approval of the auditor shall be indorsed thereon. All such permits, leases, and assignments shall be filed with the auditor, and the date and hour of filing shall be indorsed thereon. On tender of his reasonable fees, he shall furnish a certified copy of any such instrument, with the indorsements thereon, which copy may be filed for record with any register of deeds.

PAYMENTS.

SEC. 2494. All payments under or on account of prospecting permits and mining leases shall be made to the State treasurer on the order of the auditor, and shall be credited to the permanent fund of the class of lands to which it properly belongs.

DISCOVERY OF OTHER MINERALS.

SEC. 2495. Should copper or other valuable minerals be discovered on land leased for mining iron ore, the terms and conditions on which such other minerals may be mined shall be agreed upon by the auditor and the lessee; and, in

case they are unable to agree, each shall choose a referee, and the two referees so chosen shall choose a third. The decision of such board of referees shall be binding on the parties in interest.

Mr. WICKERSHAM. Now, I call the attention of the committee to the question of the transportation of this iron ore from Minnesota, very briefly. I quote from the second biennial report of the Minnesota tax commission, at page 56. In speaking of these iron ores, it says, under the head of "Transportation":

Three railroads, the Duluth & Iron Range, the Duluth, Missabe & Northern and the Great Northern transport the ore from the Vermilion and Mesabi Ranges to Two Harbors, West Duluth, and Superior, where the ore docks are situated. The Canadian has also a line reaching Virginia from Duluth and will doubtless soon become an ore-carrying road. The haul is between 70 and 100 miles, and the railroad freight per ton from the Mesabi Range is 80 cents. From the Vermilion Range the rate is $1. The Cayuna Range is reached by the Northern Pacific and the Soo with a haul of 100 miles and a freight rate of 65 cents per ton. From the ore docks the ore is loaded into large freight boats carrying from 8,000 to 10,000 tons and conveyed down the Lakes to the various Lake Erie and Lake Michigan points and South Chicago at a rate of about 65 cents a ton.

I call that to the attention of the committee, because of the excessively high rates of transportation in Alaska, to which I called attention the other day when I was talking on the general subject of the Alaska railroad bill.

The CHAIRMAN. That question of itself would necessitate a good deal of care to determine, would it not, in reference to high freight rates up in Alaska?

Mr. WICKERSHAM. Undoubtedly it would.

The CHAIRMAN. And any workable provision of a lease in Minnesota, or in any other part of continental United States, might or might not be a good criterion to go by in Alaska?

Mr. WICKERSHAM. Well, it would furnish some standard.

The CHAIRMAN. Due to the fact that in Alaska you have a water haul at 1,500 miles up, and on beyond that; and you would have to content with that difficulty in dealing with the question of high freight rates in Alaska?

Mr. WICKERSHAM. Yes. Now, I want to call your attention to the question of the royalty rates. Of course this bill provides for not less than 2 per cent and leaves the whole matter of royalty rates——

The CHAIRMAN (interposing). Not 2 per cent, but 2 cents a ton.

Mr. WICKERSHAM. Yes; 2 cents a ton; and it leaves the matter of fixing the royalty above the general minimum to the Secretary. The Secretary, I understand, is to do that by competitive bids.

The CHAIRMAN. Well, not exactly.

Mr. WICKERSHAM. Well, no; that is not right. He really fixes the rate.

The CHAIRMAN. Yes; he fixes the rate of royalty.

Mr. WICKERSHAM. So that it is a matter of favor entirely.

The CHAIRMAN. No; the bonus offered determines the priority among the bidders.

Mr. WICKERSHAM. Well, that is really a matter of favor. One tract may pay 2 cents or 20 cents, according to the good judgment of the Secretary at that moment. Now, one objection to that is this: Suppose you lease 2,560 acres of this low-grade coal land under this bill now, and you discover high-grade coal on it the next day. There is no provision in the bill to meet that condition, is there?

The CHAIRMAN. It is assumed that you have got to take some chances on what is beneath the earth. That is very true.

Mr. WICKERSHAM. Yes. Then, if I know where there is a rich vein of anthracite coal, and also a low-grade coal on the same land—and there are on some of these tracts different kinds of coal—I can go to the Secretary and get a lease on the land for 2 cents a ton royalty upon all coal in it?

The CHAIRMAN. Well, you might if you were the best bidder.

Mr. WICKERSHAM. Yes.

The CHAIRMAN. But you would have to go into the open competition to get it.

Mr. WICKERSHAM. Yes. But how much simpler it would be if you should fix some system of royalty so that every lessee should pay upon the output of the mine, according to the character of the coal and according to its value when sold in the market.

The CHAIRMAN. You could not do that, for the reason that the same quality of coal up in the Nenana field would not lease for the same amount as the same quality of coal would down on the coast?

Mr. WICKERSHAM. I think it might.

The CHAIRMAN. No; because there is a long freight haul, which would make its value materially different.

Mr. WICKERSHAM. Yes; but suppose you fix it, then, upon the value of the coal at the place of its production. Now, the value of the coal would be fixed by the very element that you speak of; that would be one of the elements in the value of the coal.

The CHAIRMAN. The value on the ground?

Mr. WICKERSHAM. Yes; the value at the pit mouth.

The CHAIRMAN. Well, that would be more equitable, I should think, than the other, although I have not had a chance to think of that.

Mr. WICKERSHAM. I think that is a very important matter, because of the wide divergence in royalties. Royalties in this country reach all the way from 2 cents to $1 a ton.

I have here a letter from a gentleman in the employ of the Northern Pacific Railroad. I shall only read the body of the letter. He says:

> In accordance with your request, I am handing you herewith a blank form of coal lease used by this company, with such modifications or additions as may be necessary to fit the peculiar conditions of each case, in leasing our coal lands. The term of the lease depends upon the area to be developed and the quantity of coal to be mined, but the usual term is 20 or 25 years.
>
> The rate of royalty is based upon the character of the coal and the cost of mining, the charges ranging from 12½ cents for cheap grades of lignite to 25 cents per ton of 2,240 pounds for bituminous coal, where the mining conditions are about normal. All leases provide for payment of a certain amount of royalty in advance at the beginning of each lease year, which we term the minimum advance royalty, ranging from $2,000 to $4,000 per section, depending upon the mining conditions and the character of the coal. Against this minimum royalty payment we charge the coal shipments from the beginning of the lease year, and no further royalty is collected during the year until the amount of coal taken out exceeds in value the amount of the advance royalty, after which the royalty is paid monthly at the rate specified in the lease.
>
> The only other provision of the lease which needs explanation is clause 2, relating to the cutting of timber. The lessees are permitted to use any timber on the land for mining purposes, either inside or outside of the mine, upon payment of its reasonable value, which ranges from $1 to $3 per thousand for saw timber and 2 cents to 6 cents each for mine props.

He inclosed a blank form of the lease used by the Northern Pacific Railroad, which, of course, is of record in that State and anyone

may get copies. This is not a copy of any specific lease; it is the standard form which they use. The company uses a standard form of lease in making leases in that State, and, of course, the rates of royalty, the descriptions of the land, and formal matters of that kind are inserted when the lease is made; but substantially their lease is set out in 13 paragraphs.

A careful inspection of that lease will show how nearly like the Pennsylvania standard lease it is. I have here, printed in a brief before the supreme court of Pennsylvania, eastern district, January term, 1909, in a case there pending, three forms of actual leases. I applied to a lawyer in Pennsylvania, upon the suggestion of a prominent official, for copies of the standard form of coal leases used in Pennsylvania, and he sent me this brief because it contained three different leases applicable to the conditions there.

As far as I can see, these Pennsylvania leases are like the Northern Pacific leases—or, substantially, the Northern Pacific lease is copied from the Pennsylvania standard lease. I would like to put one of these Pennsylvania leases in the record and read it to the committee.

The CHAIRMAN. Are the three leases different in form?

Mr. WICKERSHAM. No; except in the descriptions and names of persons.

The CHAIRMAN. Then, if you read one lease, that will cover all of them?

Mr. WICKERSHAM. Yes. It is as follows:

(Copy of plaintiff's Exhibit "A.")

"Memorandus of greement made and concluded this fifteenth day of October, A. D. 1903, by and between Mary Holt, widow, Isabelle Hirlinger, Charles H. Holt, William F. Holt, Lydia Whiteman and Frank Whiteman, her husband, Norman Holt, Norman Holt, guardian of Sinclair Holt Loraine, a minor child of Maud Holt Loraine, deceased, H. McD. Loraine, surviving husband of Maud Holt Loraine, Norman Holt, guardian of Richard Gilliland, Mary Gilliland, Ralph Gilliland, and Henrietta Gilliland, minor children of Sue Gilliland, deceased, and J. R. Gilliland, surviving husband of Sue Gilliland, heirs and legal representatives of William Holt, late of the township of Snow Shoe, county of Center, and State of Pennsylvania, deceased, parties of the first part, lessors; and M. D. Kelley, Harry P. Kelley, and T. B. Budinger, of the township, county, and State aforesaid, of the second part, lessees.

Witnesseth, that the said lessors have let and demised, and by these presents do let and demise unto the said lesees, the exclusive right to enter upon, dig, mine, and carry away all the coal that is merchantable and practically minable in, upon, and under all that certain messuge and tract of land situate in the township of Snow Shoe, county of Center, and State of Pensylvania, bounded and described as follows, to wit: Beginning at a stone corner thence east two hundred (200) perches to stones; thence south one hundred and sixty (160) perches to a maple; thence west eighty-one (81) perches to stones; thence north five (5) degrees west one hundred and ninety-two (192) perches to the place of beginning, containing one hundred and thirty-two (132) acres and ninety (90) perches and allowance, being part of a tract of land in the warrantee name of Henry Toland, together with the right to use the surface for the purpose of sinking shafts or drifts to the seams or veins of coal in, upon, and underlying said premises, also such portions of said land as shall be mutually designated by the engineers of the lessors and lessees for the purpose of depositing slate or rock taken from the mines now opened or hereafter to be opened on the said premises under the provisions of this lease; and also so much of the surface as may be required and designated as aforesaid for tipples, scales, railroads, or tramways to be used in mining and carrying away the coal mined on said hereinbefore described premises, or what may be mined through said premises under the provisions of this agreement, giving and granting to the said lessees the sole and exclusive right and privilege to

mine and ship the coal in, upon, and underlying said premises and dispose of the same to and for their own proper use and benefit during the continuance of this lease, or until the merchantable coal therein shall be exhausted.

In consideration whereof the said parties covenant and agree to and with each other as follows, to wit:

1. The said lessees covenant and agree to proceed at once to open and develop the coal on said premises where not already opened, and to continue their mining operations on the said premises until the termination of this lease, or until the merchantable coal in, upon, and under said premises is exhausted.

2. The said lessees hereby promise and agree that they will pay unto the said lessors, their successors, or assigns, the sum of seven (7) cents per ton for each and every ton of twenty-two hundred and forty (2,240) pounds mined & shipped from the said demised premises during the operation of this lease; the payment of the said royalty to be made monthly on the 20th day of the month succeeding the month in which the coal is mined, and it is hereby mutually covenated and agreed that the quantity of coal mined & shipped from the said demised premises shall for all the purposes of this lease be determined by the weights of the scales of the railroad company over which the coal is shipped, as shown by the certificate of the weighmaster of the said railroad, which shall be procured by the said lessees at their own cost and forwarded to the said lessors, or their duly authorized agent at Philipsburg. And all coal disposed of and not shipped over the scales of a railroad shall be weighed on the mine's scales and a certified monthly report made of it, and such report, together with all coal shipped over the railroad scales, shall be furnished each month to the said lessors, or their agent, by the said lessees prior to the 10th day of the month succeeding the month in which said coal shall have been mined and to furnish the said lessors, or their agent, provided such request be not oftener than every three months, an affidavit as to the number of tons of coal used monthly by the said lssees on the demised premises. If any of the coal herein leased shall be shipped in the same railroad cars with coal belonging to other parties or from other premises than the lessors herein, then the said coal shall be kept separate by certain numbers on the weighmaster's sheet at the time to the satisfaction of the said lessors, their agent, or engineer.

3. The minimum amount of coal to be mined and shipped by the said lessees from the said premises shall be fifteen thousand (15,000) tons of twenty-two hundred and forty (2,240) pounds each per annum during the continuance of this lease, or until the workable coal shall have been exhausted; and the said lessees promise and agree to pay for said quantity at the royalty as herein provided whether so much coal is mined and shipped or not, on or before the 31st day of December of each year; and for all coal not shipped but paid for in any one year, allowance or reduction is to be made, or credit may be claimed by the said lessees, if in the subsequent years a greater quantity than fifteen thousand (15,000) tons of coal shall have been mined and shipped or paid for; provided, however, that if the said lessees shall at any time during the continuance of this lease be prevented from mining and shipping of coal by reason of a strike of miners beyond the control of lessees or railroad contingencies, or the coal become unworkable by reason of faults whereby said lessees shall be obliged to cease the shipping of coal for the time being, then and in such case the foregoing provisions as to the minimum output shall for the time of such stoppage be suspended, such suspending not, however, to be prolonged further than is absolutely necessary under the circumstances; and at the annual settlement for the year during which said stoppage should occur, the minimum for such year shall be reduced by the deduction from the stated minimum of fifteen thousand (15,000) tons as aforesaid or the ratable proportion of said amount for the period of said stoppage.

4. The said lessees covenant and agree that within three months of the date of this agreement they will cause to be made by a competent engineer a survey of the said mine and the operation now opened on the said premises and have such engineer make a complete map of the premises and the mining operations and furnish a copy thereof to the lessors, their agent or engineer, and to cause the future workings of the said mine to be placed upon such map as the work progresses, showing a complete diagram of the mine and its workings during the continuance of this lease.

5. The said lessees agree to work the said mine in a careful and judicious manner, and after the methods of mining in general use so as to prevent unnecessary waste of coal, and to produce from the said seams on the said premises all the coal that can be produced with safety. They further agree

to commence the work of developing the said mine and operations within 30 days from the date of this agreement, and to pursue the said work industriously, diligently, and continuously after said date, and to produce coal as rapidly as the conditions will permit. The said lessees shall have surveys and maps made of the said mines and premises described in this agreement as aforesaid and at interval of not longer than three months, to accurately show upon such map the grounds worked over and all details of the work under ground. A copy of such map shall be given to the lessors, or their agent, and the original shall at all reasonable times be open to the inspection of the lessors, or their agent or engineers, who shall at all times in addition thereto have the right to examine said mine or mines, books and maps of the said lessees, pertaining to the said mine and the coal mined therefrom; and shall have the right of ingress, egress, and regress in, to, and through the said mine or mines, or to any opening leading to or from or through the same. The said lessees shall in all respects comply with all the laws of this Commonwealth and of the United States now existing or hereafter to be passed, including all laws regulating the working of coal mines, or providing for the safety of persons employed therein, and shall leave no merchantable coal abandoned or neglected in any of the headings, breasts, or chambers of the said mine or mines, except two acres of coal in each of the veins or seams immediately in and under the house and barn of the said lessors, and no part of said two acres of coal in and under the said buildings in any of the seams shall be mined by the said lessees except the same may be done with the consent of the lessors in such a manner as to protect the surface in and under the said buildings by proper pillars or supports, so that the said buildings may not in any manner be injured by reason of the taking out of the coal in and under the said buildings. If the coal in the said two acres as aforesaid shall be mined by agreement of the parties, such agreement shall be in writing, signed by all of the parties in interest. The two acres of coal reserved in and under the said buildings of the lessors shall be designated by the lessors and surveyed by their engineers, and when such survey is made the lessees shall mine the coal to the said surveys but not across the lines thereof except by consent as aforesaid, except where necessary lessees may drive headings through said reserved coal for the purpose only of getting the coal beyond, this exception to give no right to dig or drive rooms in said reserved coal.

6. Whenever it is necessary to open the roads upon the surface of the said premises to or from the openings of the said mines or any of the operations of the lessees such roads shall be regularly laid out by the engineers of the lessors and the lessees, so as to best serve the purposes of the operations, and when opened after being laid out as aforesaid the said lessees shall enclose such roads or passage ways through cultivated lands with fences sufficient to protect the fields of the lessors against damage by stock or otherwise, and shall enclose the same with proper gates and appliances so as to keep stock from entering upon the fields and premises of the lessors. And if at any time during the continuance of the said operations it becomes necessary to open the fences around the fields of the lessors the lessees agree that they shall close the same immediately after passing through and that the same shall be kept closed except when used by them, so as to prevent stock of all kinds from entering and trespassing upon the fields of the lessors.

7. The lessees, in addition to the royalties above named and stipulated to be paid, shall pay all the taxes of every kind which may be levied on the improvements erected by the said lessees in their mining operations during the continuance of this agreement; but the taxes of the coal on place on the premises and the taxes of the surface as a farm shall be paid by the lessors.

8. It is further mutually agreed between the parties hereto that the minimum royalty stipulated to be paid shall begin at the end of three months from the date of this agreement. That all coal mined and taken away prior to the commencement of the said minimum royalty shall be paid to the lessors as herein provided and in accordance with the weights as herein stipulated. It is further agreed that the coal to be mined under the provisions of this agreement shall be merchantable and workable coal, and it shall be optional with the said lessees whether to work and mine any coal the vein of which is less than two feet, six inches in general thickness, except in cases of local faults or where rolls occur so as to reduce the size of the vein below the general thickness, and in this event the coal in such fault or roll, when it is merchantable coal, shall be mined across and through such fault or rolls. In such event or thinning of the veins the lessees hereby expressly covenant and agree to drive sufficient rooms

and headings through such roll, fault, or thin place so as to determine whether or not such thinning of the vein or fault is continuous, and to develop, if possible, the coal beyond. It is further covenanted and agreed that the said lease shall continue for a period of fifteen years from the date thereof, or until all the workable and merchantable coal in, upon, and under the said premises shall be exhausted, except the two acres of coal in and under the buildings on the said premises.

9. It is further agreed that upon the termination or expiration of this agreement for any cause, or when the coal in the said premises is exhausted, the said lessees shall have the right and privilege at any time within three months after such determination or expiration to remove all buildings, fixtures erected by them, all tools, engines, boilers, iron rails, pumps, cars, machinery, or any other property belonging to the said lessees, or which they may own or have placed upon the said premises, said right of removal not, however, to be operative until all the rents, royalties, taxes, or other charges due and payable unto the said lessors, or by the said lessees payable, shall first have been satisfied, and not until after all the merchantable and workable coal has been removed from the said premises in accordance with the terms of this agreement; and in case of forfeiture the right to remove property shall not accrue until all claims of whatsoever nature of the lessors shall first have been fully adjusted and satisfied.

10. In case of default for thirty days in payment of royalty due for the coal mined and taken away, or used when and as the same shall become due and payable, or in default of the payment of the royalty on the minimum quantity of fifteen thousand (15,000) tons per annum, the said lessors may forthwith seize and levy upon all property, goods, and chattels found upon the premises occupied by the said lessees under this lease and proceed forthwith and therewith as landlords are by law authorized to proceed in cases of distress for rent, and may sell the same in accordance with the laws of the Commonwealth of Pennsylvania relating to landlord and tenant. And such right of distraint shall not be exhausted by any single exercise thereof, by seizure, levy, and sale, may be had from time to time and as often as such default shall occur.

11. The lessors, for themselves, their heirs and assigns, do hereby agree to grant and convey, and do hereby grant and convey, unto the said M. D. Kelley, H. P. Kelley, T. B. Budinger, and F. W. Crider, their heirs and assigns, the right of way through the mines now opened or hereafter to be opened upon the leased premises, free of charge, for the purpose of carrying and conveying any and all coal in, upon, and under any property or land they now have acquired, or may hereafter acquire, adjoining the said premises herein described, or that may be conveniently mined and carried through the said mines, on condition, however, that the said M. D. Kelley, H. P. Kelley, T. B. Budinger, and F. W. Crider shall pay the royalty fixed by this agreement upon all the coal contained in the pillars that necessarily have to be retained in order to protect such right of way over and through the premises of the lessors, deducting, however, such proportion of coal as could not be mined in any event, the amount of such coal to be ascertained by the engineers of the lessors and the lessees, and the said royalty to be due and payable as soon as such passageway or right of way is no longer used in the mining operations upon the leased premises and to be paid to the lessors before the right to remove the lessees' property shall have accrued under the provisions of this agreement. The right of way hereby granted shall be construed to include the right of way over the surface of the leased premises as well. It is further stipulated and agreed that the said lessees shall mine exclusively from the leased premises hereinabove described the coal of the same, even though they mine and remove more than the minimum output hereinabove stipulated for the period of two years, being the first two years under the lease, which said two years shall be deemed ended April 14, A. D. 1905, and that the said lessees shall not mine and transport and carry for the said period of two years any coal from any of their property owned or leased back of the premises hereinabove described, save the coal in the McClellan tract, in which the lessors have an interest. After the expiration of the said first two years, ending as aforesaid, then the lessees shall have the right to exercise the privileges hereby granted, or intended to be granted, in this paragraph for the right of way, and may carry and transport their coal through the mines and over the premises herein leased, provided, however, that the said lessees must at all times mine at least fifteen thousand (15,000) tons per year, as above stipulated, for the minimum output of the mines hereby leased, and that when the said lessees fail to mine such a minimum output from the leased

premises said lessees must then cease mining and transporting other coal over and through the said leased premises until said minimum number of tons are fully mined and paid for, or until the coal in and under the said Holt farm has been mined to such a point of exhaustion as will, under usual mining conditions, prevent the lessees from securing the minimum amount of coal and output of the mine; but the lessees must in good faith remove thereafter as rapidly as possible all the remaining merchantable and workable coal in the said leased premises. It is further agreed that the above right of way granted to the lessees for coal from adjoining properties now belonging or hereafter to be acquired by the said lessees shall continue for a period of ten years after the expiration of this lease. Should the lessees decide to open the adjoining McClellan tract, in which the lessors have an interest, and mine the same through land on its northeast side, it is mutually understood that no provision hereinabove set forth shall prevent the said lessees from mining and removing the strip of coal lying between such new opening and the line of the McClellan tract, provided said lessees mine and pay for the minimum provided in this agreement.

12. It is hereby further agreed that during the continuance of this lease that the lessees shall have the right to use all timber on the premises lying on the ground and standing timber of a diameter not exceeding twelve inches at the stump, three feet from the ground, for the use in the mine; it being understood, however, that this timber right only applies to the use of such timber in the mines on the premises hereby leased.

13. It is further expressly agreed that if the said lessees shall make default in the performance of any of the covenants, conditions, and agreements of this lease, which are conditions which they hereby agree to keep and perform, the said lessors may give notice in writing to the said lessees of such failure, and if the said lessees, after having received such notice, shall neglect or refuse to comply with any of the covenants and agreements on their part made in this contract for a period of thirty days thereafter, then such failure, at the election of the said lessors, shall work a forfeiture of this lease, and the said lessors may, at their option, declare the lease and all the rights and privileges thereby acquired and granted unto said lessees forfeited unto the said lessors, their successors, heirs, and assigns; and the said lessors may, by themselves, their agents, and engineers, enter upon and take possession of the said demised premises and remove the said lessees, and all persons claiming under them, from the same; and the said lessees in case of such declaration hereby surrender to the said lessors full and peaceable possession of said demised premises, mines, improvements, and all rights of way. And in case of refusal by the said lessees, or those claiming under them, to surrender possession as aforesaid, the said lessors shall be entitled to the same by action of ejectment, to which action the said lessees, their heirs, executors, administrators, and assigns do hereby confess judgment for the lands described herein contained in such writ, together with all property forfeited unto the said lessors and costs of suit and reasonable attorney's fees for entering such suit. And the forfeiture of this lease and the taking possession of the said demised premises shall not bar or preclude the right of the lessors to recover damages that may be sustained by the said lessors by reason of the default of the said lessees in keeping the covenants and conditions of this lease, nor shall such forfeiture and taking possession for the nonpayment of rent or royalty, or for the breach of any other of the conditions aforesaid by the said lessees, impair the right of the said lessors to recover any rents or royalties that may be in arrear, but for the recovery of damages and for the collection of rents and royalties by action of distress or otherwise, the covenants to be kept and performed by said lessees and herein contained shall be held and considered to be in full force and virtue.

14. This agreement shall bind as well the heirs, executors, and administrators, successors, and assigns of both parties as the parties themselves as to all the covenants, stipulations, and conditions therein contained, and is executed in triplicate, either copy of which shall be considered as an original.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

Now, Mr. Chairman, I have read that lease into the record because it seems to be one of the standard forms of lease adopted throughout the United States for the leasing of coal mines; and because it enables me to say to the committee that, in my judgment it is very question-

able whether you have empowered the Secretary of the Interior in the bill which is now before this committee to make that kind of a lease.

The CHAIRMAN. Let me get your position right, Mr. Wickersham, if I can: Is it your opinion that the bill is faulty inasmuch as it does not fully authorize the Secretary of the Interior to impose such conditions?

Mr. WICKERSHAM. Yes. But I would prefer to see the body of the lease contained in the law like it is in Minnesota.

The CHAIRMAN. That is your position, rather than that we should set up in the law a hard and fast lease that should be followed?

Mr. WICKERSHAM. Well, you can do either, but I prefer the Minnesota plan.

The CHAIRMAN. Well, what is your opinion about it?

Mr. WICKERSHAM. My opinion about it is that you can do either very fairly. You can authorize the Secretary to impose these standard terms in making these leases. If you do not give him authority to do it, Mr. Chairman, his act in doing it is not valid.

Mr. LENROOT. Is not valid?

Mr. WICKERSHAM. I doubt it.

Mr. LENROOT. Why not?

Mr. WICKERSHAM. I say if you do not authorize him.

Mr. LENROOT. Oh, if we do not authorize him.

Mr. WICKERSHAM. If your authority is not broad enough, his act in doing it is not valid.

The CHAIRMAN. That is very true; there is no controversy about that. And it is your view that the Secretary of the Interior ought to have additional authority now, given him by legislation, is it?

Mr. WICKERSHAM. Yes; if you intend to empower him to do every act within the scope of a broad coal-leasing bill.

The CHAIRMAN. Let me be sure I understand you. A moment ago you said that you thought a form of lease ought to be set out in the law, which the Secretary must of necessity use.

Mr. WICKERSHAM. Yes; I strongly favor that plan rather than to give all power to the Secretary.

The CHAIRMAN. Do you not think that that would breed trouble in actual operation?

Mr. WICKERSHAM. No; I do not think so; I think that can be very easily managed. That is the law in Minnesota.

The CHAIRMAN. Well, in a case where actual conditions are so unknown, and things have not developed far anough for Congress to have sufficient light to enable it to act intelligently, do you not think that it would be more likely to cause trouble if Congress tried to set out the exact terms of the leases in the bill, rather than let the Secretary draw up the leases, with the aid of all his bureaus and offices that have to do with those matters, and with the aid of men who have been on the ground and are familiar with those matters?

Mr. WICKERSHAM. Probably so. There will be problems, but I think the statutory leave is the best plan if you intend to lease.

The CHAIRMAN. I wanted to get your opinion on that. Now, one word regarding the specific lease you have just read: Do you think it is necessary to have that embodied in full in the record?

Mr. WICKERSHAM. Yes; I think so; but I leave that to the committee to determine.

The CHAIRMAN. I have no particular objection to it; but that is a lease between two private parties.

Mr. WICKERSHAM. Yes.

The CHAIRMAN. And where the railroad conditions and the climatic conditions are very dissimilar to those in Alaska. Hence, except as to the general covenants which run in such leases, it would not have great value in enabling us to arrive at an advantageous form of lease to fit the Alaska situation.

Mr. WICKERSHAM. I think it would.

The CHAIRMAN. I mean, except as to the general covenants.

Mr. WICKERSHAM. I called the attention of the committee to the Pennsylvania lease, the Minnesota lease, and the Washington lease, for the purpose of showing that, substantially, they are alike in their general outlines.

The CHAIRMAN. Yes.

Mr. WICKERSHAM. And that, substantially, that is the kind of lease you ought to make in Alaska; and whether you do that by putting the form of the lease in the bill, or by giving the Secretary ample authority to draw the lease, is for you gentlemen to determine.

Mr. LENROOT. You say you think that is substantially the kind of a lease that should apply to Alaska coal lands? You do not think, do you, that as to minimum output that provision would be applicable to Alaska, do you?

Mr. WICKERSHAM. That is one feature that could be left to the Secretary.

Mr. LENROOT. That is one of the very important features of the lease, is it not?

Mr. WICKERSHAM. Yes.

Mr. LENROOT. Might it not be true—as it stands, the Secretary will have a very wide discretion as to what shall constitute a sufficient working of a mine; in the case of a very high-grade mine, 1,000 tons a day might be a reasonable output.

Mr. WICKERSHAM. Yes; but under the bill as it stands he has that and all other discretion.

Mr. LENROOT. While in another field 50 tons might be a reasonable output?

Mr. WICKERSHAM. But, if you will notice, that lease does not require a maximum output for every day of the year. It requires a minimum output of 15,000 tons for the year; the lessee might take that all out in one month.

Mr. LENROOT. I understand; but the minimum output might be very properly fixed at one point for one kind of a mine, which would not be at all applicable for another point and another mine.

Mr. WICKERSHAM. Yes; and I want to call your attention to the fact that, while that lease provides for a minimum output of 15,000 tons for one year, it also provides that if more than that minimum output is taken out the next year, it shall be equitably arranged so that the excess may be applied to the preceding year. That is provided for in the lease; so it simply leaves it for the courts to determine whether the lessees are acting in good faith in working the mine or not.

Mr. LENROOT. And in case of your municipalities, you would want to leave a very wide discretion in the Secretary, would you not?

Mr. WICKERSHAM. I think there ought to be a law giving every municipality, when it is firmly established, the right to a reasonable amount of coal lands for municipal use, and without expense.

The CHAIRMAN. Those mandatory covenants as to operation would hardly work in those cases, would they?

Mr. WICKERSHAM. No; they ought not to work in the case of municipalities.

Mr. RAKER. Is it your view, that the bill does not specifically give the Secretary of the Interior the authority to lease?

Mr. WICKERSHAM. Well, I think the provisions as to that are very meager; and of course you and I will agree that he has no authority beyond the express words of the act. If you do not give him the authority, he does not have it; he has no constitutional duty to perform.

Now, the chairman called attention to the fact that the Pennsylvania lease is a lease between two individuals. Well, substantially, that is what this lease is in Alaska. The Government makes a lease of its coal lands; it does it as an owner, as a landlord; and the transaction would be governed by the same rules that govern landlord and tenant in similar matters. I do not think there is much in that objection.

Mr. RAKER. What I was asking about was, if the bill does not specifically give the direct authority to the Secretary to lease, of course it ought to contain that authority. But if it does specifically give the Secretary ample power to lease, then do not all the necessary incidents proper to a lease follow?

Mr. WICKERSHAM. Well, that is a question. What do you think about it, as a lawyer?

Mr. RAKER. I have just been reading it with that in view, and it does not contain the language I thought it contained.

Mr. WICKERSHAM. The language is not there.

Mr. RAKER. I will not say that it is or is not; but I was surprised not to find it when I looked for it.

Mr. WICKERSHAM. I do not think it is there.

The CHAIRMAN. Let me suggest this language on that point:

SEC. 3. The Secretary shall offer such blocks or tracts, and the coal, lignite, and associated minerals, therein, for leasing, and shall award leases thereof through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, to any person above the age of 21 years who a citizen of the United States or has declared his intention to become such, or to any association of such persons, or to any corporation organized under the laws of the United States or of any State or Territory thereof.

That, of course, gives the Secretary not merely one method of leasing the coal lands, but gives him three distinct methods, which he may adopt in order to work out the different problems as they come up.

Mr. LENROOT. But, Mr. Chairman, that does not provide as to what the lease shall contain.

Mr. WICKERSHAM. No; it does not.

Mr. LENROOT. Section 12 covers that.

The CHAIRMAN. Yes; there is another section that covers that.

Mr. LENROOT. Now, as to section 12, I think that gives the Secretary the right to insert all the provisions with reference to the interest of the Government as a proprietor that a private individual could have.

Mr. RAKER. That is what I——

Mr. LENROOT (interposing). But it does not authorize the Secretary to insert any provisions for the protection of the public other than such as are specifically authorized in the language itself.

The CHAIRMAN. Are you referring now to the control of the market?

Mr. LENROOT. Yes; and provisions of that character.

The CHAIRMAN. Well, it does not do that; and that is a question which we discussed several days ago. It does contain a provision with reference to interlocking directors and with reference to owning separate leases or interests in other leases—section 12.

Mr. LENROOT. That is not a provision of the lease, but is part of the law?

The CHAIRMAN. Yes.

Mr. WICKERSHAM. There is nothing in the Pennsylvania standard lease or in the Minnesota lease, as I recall it, which gives the lessor any right to control the output. He leases his coal for 7½ cents royalty under the Pennsylvania lease and the lessee may do what he pleases with the coal and sell it at whatever price he can demand.

Now, the Government of the United States, Mr. Chairman, ought not to be interested in making a lease of this land for the purpose of securing a big royalty as in disposing of the product to the citizen for a minimum cost price. What is the purpose of passing an Alaska coal-leasing law? What do we want a leasing bill for? What is the idea? Not merely to appease a popular clamor; but a leasing bill is proposed for the purpose of giving the ultimate consumer of this coal some advantage; first, to prevent monopoly, and second, for the purpose of securing cheap coal for him. Otherwise there is no possible excuse for a Government coal-leasing plan.

I think it is perfectly fair to say to this committee that none of us care when we go to buy coal who owns the land; none of us care who mines the coal; none of us care who has the lease or what the terms are or anything about it. We are interested in getting cheap coal for our cook stoves. And so is the public; but monopoly prevents the public having cheap coal because it raises the price to the point of extortion.

Mr. LENROOT. Well, we are also interested in getting the money back that we are going to spend on this railroad.

Mr. WICKERSHAM. Well, that is the wrong basis for a coal-leasing bill, though you are going to get that back; so do not let that worry you. [Laughter.]

The ultimate object to be attained in an ideal public coal-leasing bill is to give the citizen of the United States cheap coal; that is the sole excuse for it; that is the end of the bill. That is why we want to prevent monopoly, so that we can get cheap coal for the consumer. Whenever a coal-leasing bill fails to do that it is a failure and a fraud on the public.

Mr. RAKER. Is not another important thing to start with to open up the coal fields, so that coal can be mined?

Mr. WICKERSHAM. Yes; but only for the purpose of giving the people cheap coal. We can get coal in Alaska now by paying $16 a ton for it. And our coal would have been opened long ago upon a plan which did not help the consumer.

Mr. RAKER. But you do not get any Alaskan coal?

Mr. WICKERSHAM. No, but we would have had it long ago on a plan which would not have aided the consumer.

The CHAIRMAN. But is there not a higher and a more easily workable purpose than that; and that is to furnish wholesome competition in the development of the coal lands of the United States, so that the consumer may buy in an open, competitive market, free from monopoly and free from unjust oppression?

Mr. WICKERSHAM. Yes. But you always get back to the consumer; and the whole object of this bill, and of all other bills for the opening of coal lands in Aaska, must be to give the ultimate consumer cheap coal. Otherwise you fail to give the people the benefit of their own coal mines.

The CHAIRMAN. I confess that one of the main purposes that actuates me in trying to get the Alaska coal-land bill through is to try to help the ultimate consumer. Of course, there are those in the House who will be deluded with the idea that we will get more revenues for the Federal Government by this means—a thing that I have not allowed myself to be deluded by.

Mr. WICKERSHAM. Mr. Chairman, some provision is made in this bill for exact terms in the lease; some provision is made for protecting the United States; some provision is made for the prevention of monopoly in the number of the acres of land; but nowhere is there any provision in it for the prevention of monopoly and extortion in the selling price to the ultimate consumer, and that ought to be the first great object to be covered, otherwise you do not give the people the benefit of their own coal.

One man may take 2,560 acres—call him Guggenheim, for instance—he may take 2,560 acres in the Katalla field; Jones may take another 2,560 acres; you may give these 2,560-acre tracts out to lessees under this bill, but you do not reserve any right in the law to control the coal mined beyond the point of collecting the royalty and preventing a monopoly of acreage—the public is not protected from extortion in price.

Mr. RAKER. Except as the Government generally has the right to control monopoly in Alaska as in other places.

Mr. WICKERSHAM. Yes, but that is so far a failure. In the Bering River field there are but 35 square miles of coal—an amount equal to nine leaseholds.

Mr. RAKER. Yes.

Mr. WICKERSHAM. Nine men could lease this whole tract of high-grade coal in the Bering River field; and they might get together in a dining-room in the evening, with cigars and something to drink, and one of them might say, "Now, boys, how much are we going to charge the innocent consumers for this coal we have leased from the Government?" And one would reply, "Well, about $10 a ton, I think, is a good price down at the tipple." Now, what power is there in the Government to prevent that?

The CHAIRMAN. The Sherman antitrust law would cover that.

Mr. WICKERSHAM. Oh, I do not know whether it would or not. It never has stopped it so far.

The CHAIRMAN. Why not? There is a combination in restraint of trade right in the face of the Sherman law.

Mr. WICKERSHAM. Well, you have got to prove it in the first place.

The CHAIRMAN. Of course; but that is true of every case; you can do nothing under the law without proof.

Mr. WICKERSHAM. No; you can not do it without proof. But let us suppose another case. Suppose the Katalla coal is loaded on scows at Controller Bay and towed over to Valdez, a distance of about 100 miles. Suppose the operator puts an excessively high rate for mining and a much more excessively high-water rate on us for that; what are you going to do about that?

The CHAIRMAN. The interstate commerce law will control.

Mr. WICKERSHAM. No; the interstate commerce law will not help us, for it is an all-water rate.

Mr. RAKER. Do you think that we ought in this bill to keep track of the coal until it is delivered to the ultimate consumer?

Mr. WICKERSHAM. Well, then, what is the good of it? If we are not going to get cheap coal out of this leasing bill, what is the good of it?

Mr. RAKER. Well, I do not know; but I thought it was one of the great, big things——

Mr. WICKERSHAM (interposing). Oh, I know you are coming back at me now with the suggestion of opening up Alaska; but I want these mines opened, too; and I want them opened under a process and scheme that is going to give our people cheap coal, and not turn all the money into the coffers of the Alaska Syndicate, or some other syndicate, who may charge us more for our coal than the traffic will bear.

Now, if the Government is going into the business of managing these coal mines in Alaska, and can not manage it any better than to turn them over to a monopoly and let that monopoly rob the consumer all it wants to——

The CHAIRMAN (interposing). Now, Judge Wickersham, do you see anything of that kind in this bill, or do you think there is anything in the minds of the members of the committee that will permit any such thing as that? Why do you think you should inject anything like that into the record, while you are in the position of one who is seeking relief for his territory?

Mr. WICKERSHAM. I think the committee is trying to do what it thinks is right, but I do not believe the bill which merely leases without securing the consumer against excessive prices is a wise piece of legislation. While I want relief from the long delay in development, I do not want it at the expense of the people who must use this coal. A monopoly of excessive price is the worst form of monopoly.

The CHAIRMAN. Then let me say to you that it is your duty to come before the committee with such proposed amendments as you think will remedy that. If you see anything in the bill which will be injurious to the public interest, it is your duty to come here with amendments prepared to it, so that when the committee gets to reach this bill section by section, we can have the benefit of your views on it.

Mr. WICKERSHAM. Well, substantially, that is what I have been doing for three or four years.

Mr. RAKER. Well, taking your illustration of the nine coal mines which were separate; after they obtained their leases under the bill, if the bill should pass, is it not possible that if they entered into a combination they would be subject to the present laws governing combinations in restraint of trade, and that that would be illegal and would be prohibited?

Mr. WICKERSHAM. No; it could be done in such a way that it would not be prohibited. I can only think of one way at the moment, and that is by charging it up to you on the water rates. There may be a dozen other ways to do it.

The CHAIRMAN. Competition would prevent that.

Mr. WICKERSHAM. Oh, no; it would not.

Mr. RYAN. Mr. Chairman, I would like to ask Judge Wickersham a question. Suppose I came into one of those ports with a foreign vessel, and bought 10,000 tons of coal and put it on that vessel. How are you going to keep track of the consumer when I sail off with that coal? How can there be a law written that will cover that, under the present commercial methods of doing business?

Mr. WICKERSHAM. Oh, yes; that would be entered in the customhouse.

Mr. RYAN. How could you trace the coal to its final destination?

Mr. WICKERSHAM. It is all entered in the customhouse.

Mr. RYAN. Well, mine is a foreign ship, and am leaving the port; and you have no jurisdiction over me after I leave the port.

Mr. WICKERSHAM. Well, that might be true in that instance, but you are assuming that you buy on a credit, and carry it away from the country without paying for it.

Mr. RYAN. And that is the commercial competition that rules the world.

Mr. WICKERSHAM. Well, that may be. Now, Mr. Chairman, I introduced a bill several times in the House to give the consumer relief, and have never been able to get it up for consideration before the committee; but I would like to read it.

Mr. LENROOT. What is the number of that bill? Was it introduced in this session?

Mr. WICKERSHAM. No; it is H. R. 25662, introduced in the Sixty-second Congress, second session. It is "A bill to amend an act entitled 'An act to encourage the development of coal deposits in Alaska, approved May 28, 1908, and for other purposes.'"

The CHAIRMAN. Is it a leasing bill?

Mr. WICKERSHAM. No; but it contains an idea which I think you can easily put into this leasing bill; and I call it to your attention, because I thought the idea ought to be in the leasing bill. I think this leasing bill ought to do more than merely authorize the leasing of coal lands to a monopoly. And I think that is what this bill would do now. I think this bill means monopoly.

Mr. RAKER. But you do not explain how it is going to create a monopoly; I would like to get your idea on that.

Mr. WICKERSHAM. I have only told you one way of carrying it out, and that is by the freight rates by water, or in excessive prices. They would not need to enter into a conspiracy; they can manage that; "gentlemen" do it right along by "gentlemen's agreements."

The CHAIRMAN. Has the Federal Government anywhere in any

State, either in the leasing or the sale or disposal of lands where coal or oil was deposited, ever sought to control the prices at all?

Mr. WICKERSHAM. I do not think so.

Mr. LENROOT. I think they do in the case of water power.

Mr. WICKERSHAM. Probably it is done in the case of water power; and it is always done in the control of freight rates. This is the same proposition as is involved in the Government control of freight rates.

The CHAIRMAN. But I mean on coal and oil leases; have they ever tried to do it there?

Mr. WICKERSHAM. I do not know; I have not looked into that thoroughly, but they do it in passenger and freight rates on the railroads.

The CHAIRMAN. But the Interstate Commerce Commission regulates that.

Mr. WICKERSHAM. Well, this is the same principle exactly and can be written into this leasing bill in a practical way as effectually as the law for governing railroad rates.

The CHAIRMAN. Oh, well; the leasing of Alaska coal land is not the same thing as transportation.

Mr. WICKERSHAM. No; I say the principle of controlling coal-selling rates is the same as the principle controlling railroad rates. And Dr. Holmes said this morning that that principle was adopted in Germany. They do that in Germany, do they not, Dr. Holmes?

Dr. HOLMES. They reserve the right to do it.

Mr. WICKERSHAM. Well, that is all I propose to do; to reserve the right to do it. But this bill authorizes a contract of lease without reserving any right of that kind.

The CHAIRMAN. Well, do you think if we were to incorporate an amendment of that kind—I am asking this question for information—that any one would lease the coal with a provision of that kind in the bill?

Mr. WICKERSHAM. I do not know, but it is better not to lease than not to reserve the right to protect the people in the selling price of their coal.

The CHAIRMAN. And might you not have erected a greater barrier against the opening of the lands than you have now?

Mr. WICKERSHAM. It may be so.

The CHAIRMAN. You would not want to do that, would you?

Mr. WICKERSHAM. I do not want another monopoly created in Alaska coal.

The CHAIRMAN. You have recently asked Congress to appropriate such a large amount of money to build your railroad in Alaska, which Congress has very generously done by a large majority of both Houses, and undoubtedly your country is very much pleased with that?

Mr. WICKERSHAM. Undoubtedly it is.

The CHAIRMAN. And it would be the part of fairness on the part of Alaska to support a companion bill to that which would give the railroad some hope of success, would it not?

Mr. WICKERSHAM. I am going to do that, Mr. Chairman, in good faith; and if this committee does not take my view of the bill I am not going to make any more trouble about it; I will support the bill if you do not happen to agree with me, for I am in hopes it will be

amended somewhere along the line, and if it is not it will not be my fault.

The CHAIRMAN. Well, please do not misunderstand me. The committee is rejoiced that that is the position of the gentleman from Alaska and that he will be with us on the bill in the House. But I greatly hope that the gentleman might not be in the position of one who is walking one way and looking the other, and while stating that he is for the bill at the same time contending for the insertion of provisions which would make it a nullity.

Mr. WICKERSHAM. That would be a trick to defeat the legislation, Mr. Chairman; and I do not want any member of this committee to think that I would do that. I expect to support the bill, but first I intend to do what I can to get it in what I think is a proper shape.

The CHAIRMAN. I am glad to hear that.

Mr. WICKERSHAM. But I do not want to see the antimonopoly law of 1908 wiped out by this bill and another monopoly encouraged in the leasing of the coal lands.

The CHAIRMAN. Well, you have had that law since 1908, have you not?

Mr. WICKERSHAM. Yes.

The CHAIRMAN. I helped to support that law and I thought it was a good law and I think it is a good law now.

Mr. WICKERSHAM. Yes.

The CHAIRMAN. But, for some reason, six long years have elapsed and yet not a thing has been done under that law; so that would suggest to the ordinary mind that you needed something more than that, would it not?

Mr. WICKERSHAM. Oh, not at all. That is nothing against the law. The reason the act of 1908 has not been operative is that during the long years since its passage the Interior Department has refused to perform its duty of deciding these land cases.

The CHAIRMAN. Well, we can all rail against the Interior Department.

Mr. WICKERSHAM. I am not railing against the Interior Department. I am merely saying why the act of 1908 should not be held responsible for conditions.

The CHAIRMAN. But at the same time, do you now have any hope of getting that department, with another Secretary at the head of it, to release the embargo, or of getting the President to release the embargo and allow those lands to be disposed of under that law? You have not any such hope, have you?

Mr. WICKERSHAM. Well, I would hate to criticize the Interior Department in that way.

The CHAIRMAN. Well, now, have you any such hope? We are talking now about it as a practicable, feasible proposition.

Mr. WICKERSHAM. I believe the department as now constituted has the purpose of deciding those cases when it gets to them according to the law and the facts.

The CHAIRMAN. That is not an answer to my question.

Mr. WICKERSHAM. I think it is.

The CHAIRMAN. Not at all. I asked you if you thought you could get the President or Secretary Lane to vacate the order of withdrawal of all the Alaska coal lands and let the old law attach to them,

the acts of 1904 and 1908 and the rest of them. Do you have any hope of that?

Mr. WICKERSHAM. I have no hope of doing that; no.

The CHAIRMAN. No; I do not suppose you have.

Mr. WICKERSHAM. But I do have a hope that they will go ahead and decide those cases which have been pending in the Interior Department since 1906.

The CHAIRMAN. Oh, yes; and I think they ought to do that.

Mr. WICKERSHAM. Well, suppose they do——

The CHAIRMAN. Yes.

Mr. WICKERSHAM. And issue patents for some of them, that will then leave the law of 1908 in effect, if you do not repeal it, as to all of the cases which they may decide are valid.

The CHAIRMAN. Well, they have just decided 565 cases, and 2 of them went to patent and 563 were decided adversely. So we can not anticipate that many of them will get by.

Mr. WICKERSHAM. Yes; but you can understand as well as I do that nearly all of those cases that were decided adversely were default cases.

The CHAIRMAN. You suggested that. I took your word for that.

Mr. LENROOT. Is it your idea, Mr. Wickersham, that, so far as those claims may be patented, this bill repeals the law of 1908?

Mr. WICKERSHAM. That is my idea as it now stands.

Mr. LENROOT. Where do you get that idea?

Mr. WICKERSHAM. From the repealing clause of the bill.

Mr. LENROOT. The bill says that all acts in conflict with this act are repealed.

Mr. WICKERSHAM. Yes; "All acts and parts of acts in conflict herewith are hereby repealed." Is not the act of 1908 in conflict with this bill?

Mr. LENROOT. Would it be in conflict, so far as a patent has been issued and everything done?

Mr. WICKERSHAM. The patent has not been issued; the cases are not decided by the department yet; they are pending. Now, if you repeal the antimonopoly law of 1908, which is specially applicable to Alaska only, before those cases are decided, and the courts should finally decide that they had complied with the law, would not the patent issue without any regard to that antimonopoly provision?

Mr. LENROOT. Now, let us see; if those laws of 1904 and 1908 have been repealed by the passage of this bill, under what law would the patent issue?

Mr. WICKERSHAM. Under the general laws of the United States applicable to coal lands, if at all.

Mr. LENROOT. According to your idea, those laws are repealed.

Mr. WICKERSHAM. Then they could not get a patent at all.

Mr. LENROOT. That is the point I am getting at.

Mr. RAKER. Do not the Revised Statutes of the United States provide that the repeal of an act does not affect any of the rights the party has already acquired under act when it was in force?

Mr. WICKERSHAM. That may be in the statutes; I do not know; if so, why specially repeal the antimonopoly law?

Mr. RAKER. Ordinarily it is. I looked it up some time ago, and that is my recollection.

Mr. WICKERSHAM. You may be right about that.

Mr. RAKER. Yes. Let me ask you this question, as to the monopoly proposition and protecting the public: Suppose you take section 12 of the bill, and add to it this language at the end of line 14, page 7, which was suggested by Dr. Holmes: "And for safeguarding the public welfare"—add that as one of the conditions in the law—one of the authorities for the Secretary of the Interior to use; would that cover the subject?

Mr. WICKERSHAM. That does not mean anything. Why not give him such power as you would give an ordinary attorney, in fact; if you were giving an ordinary power of attorney to me as your agent you would give me very broad powers, if you had any confidence in me. Why not do it here in the bill?

Mr. RAKER. I am now going back to section 3 of the bill, showing the powers he has now——

Mr. WICKERSHAM. Let us give him undoubted authority to make leases if you want him to do it, but I still think the lease ought to be set out in full in the law.

Mr. RAKER. I would add something like this as a first paragraph of section 3, right after the words "section 3"—

That the Secretary of the Interior be, and he hereby is, fully authorized and empowered to lease the coal lands of Alaska.

Then that provision about unreserved land comes. Then, turn to the conditions of your lease, and the Secretary is given plenary power to carry out all the necessary conditions of the lease, and there would be specified in the bill as one of them, "for safeguarding the public welfare."

Now, certainly in a lease of that kind, under those provisions, would not that protect the public as well as you can protect them?

Mr. WICKERSHAM. Well, I can only think of the authority which we usually give an agent when we make a power of attorney; and I suggest that if you are going to give him authority to do this work the Secretary ought to have very broad authority. I do not know; I have not studied the question as to whether it is broad enough. But I now call your attention again to the fact that this bill does repeal the antimonopoly acts of Congress.

Mr. RAKER. Well, that is the intention of it, as a matter of fact.

Mr. WICKERSHAM. Well, if that is the intention, let us understand it.

Mr. RAKER. I think we ought to understand it. I have understood all the time, from the very inception of this act, that what we are trying to do is to wipe out all the laws of Alaska upon the question of coal land and to put them all under a leasing system, saving and excepting, of course, under the statute, that the claims now initiated might go on in the Land Office to final adjudication.

Mr. WICKERSHAM. The bill does not save their rights. You wipe them off the statute books by the repealing clause.

Mr. BROWN. That is done in the act of 1908, is it not?

Mr. WICKERSHAM. But you are going to repeal that.

Mr. BROWN. You mean so far as any vested right is concerned?

Mr. WICKERSHAM. Perhaps not, but the bill as it now stands seems to attempt to do it.

The CHAIRMAN. I do not think the committee intends to do that at all.

Mr. RAKER. I think it is the intention to wipe the slate as clean as you can wipe it.

Mr. WICKERSHAM. Yes; I so understand it.

Mr. RAKER. And start with a new policy, namely leasing, saving and excepting—which I believe the present statute does—that those who have initiated rights in Alaska may continue to go on with the prosecution of those claims and have a determination by the Department of the Interior as to whether or not they have legal claims.

Mr. WICKERSHAM. Then, I think you ought to say so in that last clause.

Mr. RAKER. I do not know how the committee feels about that.

The CHAIRMAN. That is the intent.

Mr. RAKER. But that is the intention of this bill, as I gather it.

Mr. WICKERSHAM. Well, the bill says, "That all acts and parts of acts in conflict herewith are hereby repealed;" and you see that means to repeal all the antimonopoly laws of 1908.

Mr. RAKER. I think so.

Mr. WICKERSHAM. Well, you do not save their rights if you do that; they may be saved by some other law; I do not know.

Mr. LENROOT. Will you tell me whether you think the act of 1908 is in conflict in any respect with this bill?

Mr. WICKERSHAM. Judge Raker has told you that. It is his idea that this bill wipes off all other laws and starts anew with a clean slate.

Mr. LENROOT. I would like to know wherein you think it is in conflict. That act of 1908 relates only to freehold titles, and this bill has nothing to do with freehold titles.

Mr. RAKER. What I mean by that is, that all the laws relating to the obtaining of title to coal land in Alaska are disposed of; but the provision as to monopoly of fuel product is not in conflict with this bill and therefore would not be repealed by it.

Mr. LENROOT. That is true.

Mr. RAKER. Yes; I did not mean that the bill would affect any other law except those relating to title and the disposing of lands in Alaska.

Mr. WICKERSHAM. Well, I think there is a very serious question whether such a repealing clause does not in fact repeal all coal-land laws now applicable to Alaska.

Mr. LENROOT. Well, this act of 1908 only goes to affecting those who have a free title. Now, if any one has a free title heretofore or hereafter, there is nothing in this bill that is in conflict with the terms of that law.

Mr. WICKERSHAM. Well, I am very much afraid there is. I am very much afraid that it will have the effect that Judge Raker has suggested of wiping everything off the statute books in respect to coal-land laws in Alaska except this new law.

Mr. FERGUSSON. So it does, as to the method of acquiring title to land.

Mr. WICKERSHAM. In the future?

Mr. FERGUSSON. Yes.

Mr. WICKERSHAM. What effect does it have upon the other provisions of that act?

Mr. FERGUSSON. Not a bit in the world. As Mr. Lenroot says it does not repeal the law of 1908.

Mr. WICKERSHAM. I am not sure about that, Mr. Fergusson. My judgment is that the question is very doubtful.

Mr. RAKER. Well, Mr. Wickersham, right in this connection again, you would not want a provision put in this bill that would renew the litigation over these claims, would you?

Mr. WICKERSHAM. Oh, no. I do not want that.

Mr. RAKER. That we agree upon.

Mr. WICKERSHAM. Yes. I have offered a bill in the House to give claimants an appeal to the courts because the department will not decide the cases, but could never get any support for it, and could not expect to now.

Mr. RAKER. But you thing that those cases which are undecided ought not to be affected by any legislation, do you?

Mr. WICKERSHAM. Yes, that is the way I feel exactly.

Mr. RAKER. Let me ask you one question before you go on. The improvements on the property leased out by the Government would be taxable, would they not?

Mr. WICKERSHAM. Well, the property leased belongs to the Government. Suppose we tax it, and the lessees do not pay the tax, what would we do about it?

Mr. RAKER. Well, I think it is an important proposition, and I think something ought to be done as to the taxes. In other words, you have got leased lands, and you ought to provide some taxation for Alaska. Now, do you believe under the lease that the property and improvements upon the leased land would be subject to the Alaskan fiscal laws, so that they could collect taxes on them?

The CHAIRMAN. That is, the personal property?

Mr. WICKERSHAM. Yes, it is personal property; I realize that. But suppose they did not pay the tax and the property must be sold. There is a provision in this bill that no person shall acquire any of this property or a lease upon it without the permission of the Secretary of the Interior. I do not know whether you could sell it for taxes under the law as it now stands; whether you could convey title to it to a purchaser. I think not.

Mr. RAKER. That is what I meant. Now, another step further: As the coal is taken out of the mines your Alaska laws would attach to it and put it under the taxation laws of your Territory; is that not correct?

Mr. WICKERSHAM. We have not any law now which would do that, but I suppose laws of that kind can be enacted by the local legislature.

The CHAIRMAN. While Alaska was a Territory our territorial legislation provided that the improvements on a homestead were personal property and subject to taxation, and they would even go on the land and remove some of the houses.

Mr. WICKERSHAM. Yes; they might even remove the houses.

The CHAIRMAN. And they could haul the improvements off as personal property to enforce the collection of taxes. And I assume that your Territory could do the same thing now.

Mr. WICKERSHAM. But under this bill the United States will make the lease and under that lease will hold the property subject to the payment of the landlord's dues. Now, which would take precedence, the United States landlord's dues or the territorial taxes?

Another thing, the United States reserves all coal land in Alaska by this bill, and of course it will not go into private ownership. The

Territory can not tax the land, of course, because we can not tax the property of the United States without special permission, which you do not give. We may tax the improvements which lessees put upon that property, but there is no provision in this bill covering the matter of taxation, or anything of that kind, except that you have made a very fair arrangement that the royalties shall go into the Alaska fund. If that substantially equals the amount of tax which the taxpayer pays, it is not unfair.

The CHAIRMAN. Well, you would hardly advocate the principle that the Federal Government ought to tax a reserve withheld for such patriotic purposes as war and navy material, would you?

Mr. WICKERSHAM. I am not talking about the reserve; I am talking about the leases. These leases are not being reserved for patriotic purposes. The lands are being reserved to lease for royalty, and they ought to be taxed.

The CHAIRMAN. Of course the money is all going back to the people of Alaska.

Mr. WICKERSHAM. Yes. I say that when the royalty paid into the Alaska fund is equal to the citizen's tax, then neither the citizen nor the Territory can complain. That is undoubtedly true, but it ought to equal that amount.

Mr. BROWN. What do they do in the various States where the people make these coal leases? Is not the leasehold itself considered as property for taxation—the value of the contract itself; is not that just as much personal property, that instrument of lease, as the machinery and shacks and everything else of the mining company?

Mr. WICKERSHAM. Well, of course they tax all property; they tax the real estate, and the output, and probably there is a tax——

Mr. BROWN (interposing). What I was trying to get at was this: We will assume that the lease is so drawn that the owner of the mine pays the land taxes. Does not his tenant, the operator, pay personal taxes on whatever improvement he has got?

Mr. WICKERSHAM. He will if the bill so provides, and not otherwise.

Mr. BROWN. Would not the same thing hold good in Alaska, so that the instrument could be taxed, if there is any profit in it, as well as taxing the improvements?

Mr. WICKERSHAM. Probably so. Your attention is being called to the fact that under this bill it is doubtful if the lessee will have to pay any tax, either on real or personal property, on these United States leasehold estates.

Mr. BROWN. Well, then, that lease is immediately seized by the Commonwealth, which can operate or sell it.

Mr. LENROOT. Mr. Chairman, may I suggest the distinction that as between individuals and the Commonwealth the Commonwealth may step in, through its taxing power, and even secure an assignment of the lease; but when the United States Government prohibits the assignment of the lease, would not that prohibition operate in the Territory of Alaska?

The CHAIRMAN. Except this, that the bill provides that the leases must be mined or operated with the approval of the Secretary of the Interior. If the tenant of the lease will not mine, presumably the Territory of Alaska, which takes the mine for taxes, will not mine it, and if they will not do so, the property lapses to the United States Government, and so there you have the turning of the wheel.

Mr. WICKERSHAM. Not at all. This property belongs to the Government of the United States, and in the organic act creating the Alaska legislature of August 24, 1912, Congress specifically limited its authority so that we can not tax property of the United States. Of course the leasehold, the property in the leasehold, is not the property of the United States. But the provision in the bill requiring the lessee to stand in the place of the United States, and other provisions, may prevent that.

The CHAIRMAN. You could attach the leasehold, certainly.

Mr. WICKERSHAM. No; because then the territory or a tax purchaser might come into possession of all these leaseholds.

The CHAIRMAN. You would hardly advocate any sort of tax upon any Government property anywhere, would you? That would be more far-reaching than you are contending for regarding Alaska.

Mr. WICKERSHAM. Oh, I am only calling attention to the situation. I think the committee has acted very wisely in giving the Territory some financial advantages substantially equivalent to a tax; I would not have called attention to it, but Judge Raker spoke about the matter of taxation there.

Mr. RAKER. Yes.

Mr. WICKERSHAM. But there are other things that ought to be considered. We hope to have towns built at the mines on this coal land. They will need public utilities, schoolhouses, churches, and all that sort of thing, and no provision is made for them—possibly it can be done later.

The CHAIRMAN. Those towns will be built on fee-simple title. Your township laws are still applicable up there.

Mr. WICKERSHAM. No, not on lands reserved by this bill.

The CHAIRMAN. The Alaska railroad bill provides for the opening of towns, and great revenues will come from them, just as they did all through my State of Oklahoma from the opening of town sites; the town lots were sold at public sales for large sums of money, which went to the benefit of the towns, and the towns are doing very well as a result.

Mr. WICKERSHAM. But that was not on reserved coal lands.

Mr. RAKER. This bill only applies to the coal lands.

The CHAIRMAN. It not only applies on coal lands, but any other lands as well. The Federal Government has sold the coal lands and the Indian lands at McAlester, and a great city has grown up on the coal lands and the Indian lands. Of course, fee-simple titles are given, and the lots are auctioned off.

Mr. RAKER. But this bill cuts that out. The coal lands must be leased. I think that after you once get all the coal lands surveyed, if it is not thrown open, it ought to be compelled to be thrown open by act of Congress.

The CHAIRMAN. Well, there will be acts of Congress as to town sites. There will be no trouble about that. If a town is needed by a certain section in Alaska, the genial and industrious Delegate from that Territory will be here post haste asking us to allow them to sell town lots, as they do everywhere else.

Mr. LENROOT. With reference to the coal lands, I would like to ask whether it is Mr. Wickersham's opinion that this bill itself acts as a withdrawal of coal land through any other form of entry?

Mr. WICKERSHAM. I have not considered that question.

The CHAIRMAN. I do not think there can be any doubt about that, Mr. Lenroot. I think the undoubted purpose of the Department of the Interior, and the undoubted purpose of the Geological Survery, and all those who had to do with the drawing of this bill, was to apply a leasing law to the entire portions of Alaska that were designated as coal lands. I do not think there is any question about that; and that was to supersede any other method of acquiring title to those lands.

Mr. LENROOT. Well, no classification is provided for in terms in this bill.

The CHAIRMAN. Yes; a block system.

Mr. LENROOT. I understand as to that; but as to anything which is not blocked?

The CHAIRMAN. No; that is true. It becomes the duty of the Secretary of the Interior under this bill to have a survey made and to block out the lands and make a public offering of them, pursuant to a printed schedule, at a certain fixed rental, and the best bids to be determined by the amount of bonus offered, the same as they do all over our State for coal and oil lands. Am I right about that, Mr. Finney?

Mr. FINNEY. That is correct. I just want to say, Mr. Chairman, that under present laws lands containing deposits of coal are not subject to sale as town sites.

The CHAIRMAN. No; there would be a special act required before they would be.

Mr. WICKERSHAM. There is no way to locate towns in Alaska on reserved coal lands under this bill.

Mr. RAKER. In that connection it would be well to call attention to this word in section 3, "unreserved." All the lands there are in Alaska are reserved, practically, are they not? Now, this bill only applies to "unreserved" lands.

Mr. WICKERSHAM. Well, "unreserved" here has reference to the proposed reservations in Bering River and Matanuska coal fields.

Mr. RAKER. I presume that that is what is intended; but as a matter of fact practically all the lands are reserved, and unless they are unreserved this bill would not apply to them.

Mr. LENROOT. Are they reserved or withdrawn?

Mr. FINNEY. They are withdrawn under the Federal act of June 25, 1910. They are awaiting legislation. That is the theory under which they are withdrawn.

Mr. LENROOT. They are not denominated as reserved lands at all, are they?

Mr. FINNEY. No. We do not call them reserved lands.

Mr. WICKERSHAM. Now, in addition to the letter of Director George O. Smith, dated January 21, 1911, in respect to the different grades and values of coal in the Territory of Alaska, I want to call the attention of the committee to Bulletin 424 of the United States Geological Survey, entitled "Valuation of Public Coal Lands," and pages 8, 9, and 10, and on through that chapter.

That relates to the royalty value of coal lands; it gives very much information in respect to the royalty value of coal lands in the United States. And rules are laid down there by which the royalty

value of coal lands can be standardized and determined. I do not want to put any part of that bulletin in the record or to take the time of the committee by reading it. I only want to call the attention of the committee to it, because it is a very important official discussion of coal royalties and the methods by which royalties ought to be fixed. A fair reading of that official document justifies me in insisting that some arrangement ought to be made for recognizing different rates of royalty on different kinds of coal in the Territory of Alaska and for urging upon the committee that different minimum rates should be fixed upon different grades of coal. As I said, however, the whole matter is up to the committee, and I do not want to make any particular objection. I feel that I have a duty to perform in respect to legislation in that Territory, and realizing that if this bill becomes the law and leases are made under it they never can be changed, and that if I do not say what I have to say now I can never say it, I feel obliged to make my objections in good faith and in plain language.

The CHAIRMAN. Mr. Wickersham, will you draw up proposed amendments to the bill along the line of your thought on that particular point that you have just mentioned?

Mr. WICKERSHAM. Yes; I will be glad to do it.

The CHAIRMAN. And it is possible in that way that we can perfect the bill in the points wherein it seems to you to be deficient now.

Mr. WICKERSHAM. I will; Mr. Chairman, I think I have made substantially all the suggestions that I want to make, except such as I can make when we come to consider this bill——

The CHAIRMAN (interposing). Section by section. All right. Is there any one else that desires to be heard? If not we can close these hearings at this time.

Mr. WICKERSHAM. So far as I know you can.

The CHAIRMAN. While Dr. Holmes has spoken about the question of controlling this coal to the ultimate consumer, and what he thinks can be done along that line, I should like to ask him a few questions upon that subject.

Dr. Holmes, we have had suggestions here from different witnesses who have appeared before the committee to the effect that the bill is perhaps faulty from the fact that it does not seek to control the price of the product in the interest of the consumer after it is mined and removed from the mine. What is the view of the department, and what is your own view as the head of the Bureau of Mines, on that proposition? Is it possible to do it, and is it feasible?

Mr. HOLMES. It is an excedingly difficult thing to do, Mr. Chairman; and with the existing governmental machinery, I am afraid the difficulties are so great that an effort to do it at this particular time would be detrimental to the successful inauguration of the leasing bill in Alaska.

The CHAIRMAN. It has been suggested here that, for instance, the Bering Field, which is not a very large field, might be taken up by a few people, and they might then enter into a "gentleman's agreement," so to speak, and decide on who should have the coal, and at what price, and thereby effect a complete monopoly, which would work a great hardship on the consuming public.

Mr. WICKERSHAM. Let me amend that by suggesting that they might sell the output to one individual.

The CHAIRMAN. Yes; they might all sell to one individual, and thereby oppress the consuming public. What do you think of the sufficiency of the statutes we now have, for instance, the Sherman Anti-Trust Act, and other existing statutes of that sort, to enable us to handle a situation of that kind?

Mr. HOLMES. The unamended Sherman Anti-Trust Act, as it now is, and not as it is proposed to amend it?

The CHAIRMAN. Well, we can only deal with it as it now is; we do not know whether the proposed amendments will get through, or if so, just what they will be.

Mr. HOLMES. I do not see how it could do it.

The CHAIRMAN. What was that answer, Dr. Holmes?

Mr. HOLMES. I do not see how that could be reached.

Mr. LENROOT. You mean under the present law?

The CHAIRMAN. You do not think that could be headed off under the present law?

Mr. HOLMES. No; if, as Judge Wickersham said, it was skillfully done.

The CHAIRMAN. In your experience in the Bureau of Mines, and in the handling of coal and oil lands generally, both in my State and elsewhere, have you come across such a condition as that, where they were doing a thing of that kind?

Mr. HOLMES. Not in the soft coal, which is the principal coal industry in the United States.

The CHAIRMAN. Where have you found that difficulty?

Mr. HOLMES. Could I be excused from answering that question?

The CHAIRMAN. Certainly. What do you think of the advisability of incorporating in this bill a provision which would seek to control the price and the insertion of strong antimonopoly clauses, even stronger than those we now have, which to prevent interlocking ownership and things of that kind—as to that being a bar to the development of the coal lands up in Alaska?

Mr. HOLMES. I think it would be a bar, Mr. Chairman, to endeavor to do that in specific language at the present time. I will add to that the statement—or I will repeat the statement I made yesterday—that within 10 years from now, in my judgment, that will be common practice.

Mr. WICKERSHAM. Yes; but let me ask you a question: In 10 years from now, if we are not disappointed, all these lands will be leased under a contract which can not be changed in that respect; is not that right?

Mr. HOLMES. True. Now, I am going to add this statement, Judge Wickersham, that, in my judgment, the addition to section 12 of this bill of the clause which has been suggested and which I thought had already been incorporated in the bill granting the Secretary of the Interior ample right to "safeguard the public welfare," would enable the Secretary, in the drawing of the leases, to incorporate ample safeguards with reference to the price.

Mr. WICKERSHAM. You mean with respect to the monopoly feature and the benefit of cheap coal to the consumer?

Mr. HOLMES. I think that would be as broad as our public welfare clause in the Constitution—which is as broad as Congress would have authority to make it.

Mr. WICKERSHAM. Then why not put it in the law?

Mr. HOLMES. For the reason that the public is not quite ready for the fixing of prices now.

Mr. WICKERSHAM. If that is true, the Secretary could not make leases with that clause in them.

Mr. HOLMES. I think he could.

Mr. WICKERSHAM. Then why not put it in the law?

Mr. HOLMES. The Secretary will make leases under this act not only this year, but next year and five years from now and 10 years from now.

Mr. WICKERSHAM. Yes; but in the meantime he will lease all those coal lands without the clause in the lease for the protection of the consumer and after the leases are made it can not be inserted or enforced.

Mr. HOLMES. Yes; if I may make myself clear on that point, Mr. Chairman, I will say that you have got two things to do: First, get a bill through Congress, and the next thing you have got to do is to get people to operate under your bill and under your lease. I am frank to admit that for three successive years I have drawn, for different persons, clauses to be incorporated in such a lease and not one of them has gotten through Congress.

Mr. WICKERSHAM. Yes.

Mr. HOLMES. And I am exceedingly anxious as you are, Judge Wickersham, I am sure, to get something this time that will pass.

Mr. WICKERSHAM. Yes; if we do not succeed this time many will have to leave Alaska; and we feel like accepting almost anything rather than being compelled to leave the Territory.

Mr. HOLMES. Yes. I believe myself, as I said before, that within 10 years we will have some kind of commission which, in connection with important, inexhaustible resources like coal, will fix a maximum price beyond which those commodities can not be sold, just as the Interstate Commerce Commission to-day fixes the maximum rate beyond which no railroad company can go.

Mr. WICKERSHAM. That is what I want in this bill, if I can get it.

Mr. HOLMES. Well, I am in sympathy with your purpose, but I think you are just a few years too early.

Mr. WICKERSHAM. But if we do not provide for that now, the Alaska coal will all be leased, and then we can not change the lease and control extortion in price.

Mr. BROWN. Only at the end of 20-year periods.

Mr. WICKERSHAM. It may be you can not put that provision in then.

The CHAIRMAN. What is your answer, Dr. Holmes, to that question that Mr. Wickersham asked? If you think that in 10 years legislation will be on the statute books, and will be accepted by the public, that will not only control the labor in the mines, the methods of mining, the waste, the interlocking features, the limitation of area, the exact amount of royalty, and the retention of title, but also the price of the commodity, what have you to say about a 20-year lease

being made without that provision? We would then run into the future 10 years in a court and 10 years out of court.

Mr. HOLMES. Yes.

The CHAIRMAN. It seems to me that with so much regulation as that, regulating both ends, you could almost make the coal operators automatons, who would be just working for the United States, perhaps. I may be in error about that; it is just a passing thought that goes through my mind; and if I am in error about it, all right. But if not, and you think that is coming, and if you think that that is necessary, and that the Sherman antitrust law is not capable of handling the situation, that puts a different duty on the committee, it seems to me.

Mr. FERGUSSON. Let me suggest right there, Mr. Chairman, that Dr. Holmes a moment ago spoke about this "General welfare" clause?

Mr. HOLMES. Yes.

Mr. FERGUSSON. It seems to me that that was a very proper and very shrewd suggestion.

Mr. HOLMES. I think that could be incorporated in a lease to be given to-morrow.

The CHAIRMAN. Judge Wickersham, do you think that will be comprehensive enough?

Mr. WICKERSHAM. That would be of some assistance and might give some relief. I do not think it goes far enough. It is not specific and would not authorize a change in a lease once made.

Mr. LENROOT. I would like to ask Dr. Holmes a question: Is it not true that it has not yet been determined finally that the Federal Government has any statutory power to fix prices? That is still a question of general law?

Mr. HOLMES. Unless agreed to in the lease.

Mr. LENROOT. There is no bar to our doing that, if the provision is sufficiently broad to authorize such a clause in the lease?

Mr. HOLMES. No.

Mr. LENROOT. And so far as your theory is concerned, as to your suggested amendment, would it not be equally as valuable, if instead of saying—what was the language of your amendment?

Mr. HOLMES. My suggestion was the insertion of an amendment in section 12 of the bill granting to the Secretary of the Interior the right to incorporate in the lease such provisions as in his judgment were necessary to safeguard the public welfare.

Mr. LENROOT. Yes; such as, in his judgment, may be necessary to prevent monopoly?

Mr. HOLMES. Yes.

Mr. LENROOT. In the selling of coal; then also your provision as to safeguarding the public welfare?

Mr. HOLMES. Yes.

Mr. LENROOT. And we can unquestionably give him ample authority to deal with the question of monopoly in the lease?

Mr. WICKERSHAM. Yes; but why not do it in the law?

Mr. LENROOT. It occurs to me that there might be a question as to whether general language would be so construed, because we have in this bill attempted to deal specifically with the subject of monopoly in leases.

Mr. HOLMES. Yes.

Mr. LENROOT. And if we wish to incorporate provisions in this general law upon that particular question, we ought to specifically mention them, so as to make it clear that this was not the only thing we had in mind with reference to monopoly. Do you understand my point?

Mr. HOLMES. Yes; exactly.

Mr. WICKERSHAM. I want to read two sections, the first from the act of May 28, 1908, and the second from H. R. 25662, Sixty-second Congress, second session, and which cover the idea I wish to get into this bill by way of amendment. I shall offer these two sections as amendments to this bill when the proper time comes in committee:

SEC. —. That if any of the lands or deposits leased under the provisions of this act shall be owned, leased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever so that they form part of, or in any way effect any combination, or are in any wise controlled by any combination in the form of an unlawful trust, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, or of any holding of such lands by any individual, partnership, association, corporation, mortgage, stock ownership, or control in excess of 2,560 acres in the district of Alaska, the title thereto shall be forfeited to the United States by proceedings instituted by the Attorney General of the United States in the courts for that purpose.

SEC. —. That the United States reserves the right and power to regulate, control, and suppress monopolies, conspiracies in restraint of trade, and other illegal combinations in buying, selling, dealing in, storing, transporting, or otherwise handling coal mined on all lands belonging to the United States in Alaska to which patents have not been issued at the date of the approval of this act; and to prevent extortion or unreasonably excessive prices in the sale or transportation of such coal, the United States reserves the right and power to control and regulate the rates, prices, and profits which any person, corporation, mine owner, or coal dealer, and any and all other persons, corporations, or associations may charge, demand, or receive from the sale, exchange, dealing in, storing, or transportation of any of such coal; that every lease issued by the United States for coal lands in Alaska shall specifically recite the terms and conditions contained in this section; and the reservations herein made and so recited in said lease shall forever remain a limitation upon the title granted to the said land by the United States.

These two sections embody the idea that I wish to get before the committee. It seems to me that unless we reserve some control over excessive rates and prices to be charged by the lessees of Alaskan coal we have not accomplished anything by leasing the land. This is the purpose of these sections.

Mr. HOLMES. Bearing upon what Judge Wickersham said, in the bituminous coal business of the United States the Sherman Antitrust Act has been so completely and successfully prohibitory of combination in the mining of coal that it has developed a condition like this: We have a capacity for producing about 750,000,000 tons of coal—I mean capacity both in outfit and equipment and the number of miners—whereas the country needs less than 600,000,000 tons of coal. That condition, together with the prohibition against cooperation among coal operators, has resulted in a competition so strong that it might almost be called a cutthroat competition. That now applies to the soft-coal industry, about which we are talking exclusively.

And it has interfered with all our efforts toward improving the appliances for safeguarding life; all our efforts against unnecessary waste in the mining of coal; and it really is an unfortunate situation. That is a condition of things which has led me to believe, on careful consideration, that if we are going to so regulate bituminous coal

industry in the United States, leaving Alaska out of consideration for the present, as to safeguard the consumer, and at the same time safeguard the lives of the men who work in the mines, and to prevent the waste of our resources, we must substitute for the sharp competition in the mining and selling of coal at the mines a system which will permit a certain class of cooperation in that respect, but cooperation which must in turn be so safeguarded that the public interest of the consumer will also be protected.

Now, that situation grows not only out of the two conditions which I have mentioned, namely, the overcapacity for producing and the impossibility of a combination in mining operations, but also the fact that the coal industry is so extensive and the number of operators in these extensive fields of the United States is so great that there is every opportunity for competition.

In Alaska you are going to have a situation much more akin to that in the anthracite coal field, where the number of operators in any one field will be limited, and where therefore the possibility of combination, not so much in the mining, but in the selling of coal, will become the important point for your consideration.

Mr. WICKERSHAM. There is the trouble.

Mr. HOLMES. That is the reason I would not like to see any very stringent language go into this bill. Whereas, if you could put in some general language, as I suggested, or make it more specific in accordance with the suggestion of Mr. Lenroot, so that there can not be any misunderstanding, but still not so plain that it will be published all over the country as a new radical departure, and an attack upon capital, I think you will accomplish your purpose without thwarting the very object you have in view.

Mr. WICKERSHAM. Yes; but that means that we are to pass an Alaska bill which is a mere dummy.

Mr. HOLMES. Not by any means; none of us want that.

Mr. WICKERSHAM. But that is the effect of it, because it will not reach what you and I know to be the real trouble.

Mr. FERGUSSON. But as I understand Dr. Holmes, that is not the question; that is not published in advance, and it does not come up until the man has found the lease he wants to make and the block of land he wants to appropriate, and then he negotiates with the Secretary, and the Secretary is guided by this general-welfare clause that you have suggested.

Mr. HOLMES. That is absolutely my idea; and you have got no organized effort on the part of the capital to prevent the success of this leasing there.

Mr. FERGUSSON. And then it gives the Secretary—which I think is important—a give-and-take between him and the proposed lessee.

Mr. HOLMES. Yes.

Mr. WICKERSHAM. Yes; and the people will say, "Here is a Secretary who will not protect the ultimate consumer; the operator is getting all the benefit of the people's coal."

Mr. FERGUSSON. Then we will get more leases, because they will know better than that.

Mr. HOLMES. If you have had a Secretary who can escape such criticism in Alaska, I have not yet seen him.

Mr. WICKERSHAM. We can escape it by proper provisions in this bill.

Mr. FERGUSSON. And block the whole game. That is what we do not want to do.

Mr. WICKERSHAM. No; neither do I. But the real object in passing a leasing law is to benefit the consumer.

Mr. RAKER. Dr. Holmes, we desire your suggestions incorporated in the records of the hearing.

The CHAIRMAN. That does not seem to be necessary; we can take them up when we consider the bill in detail.

Mr. WICKERSHAM. Dr. Holmes, there is nothing in this bill which would forbid the giving of leases to railroad companies running to these mines. In other words, there is nothing in the bill which would prevent the creation of exactly the same system that now exists in Pennsylvania, where the railroads own the mines, and own both the coal and the transportation, and which resulted in that trust that we have heard so much about in Pennsylvania in the hard coal.

Mr. HOLMES. Have you no existing statute on that?

Mr. WICKERSHAM. None whatever.

Mr. HOLMES No existing regulations of the Interstate Commerce Commission?

Mr. WICKERSHAM. I do not know about that; I think not. That clause of the railroad-rate law was declared unconstitutional after it had been passed by Congress in respect to these Pennsylvania roads.

Mr. HOLMES. That was because they had been granted charters long before the law was passed.

Mr. WICKERSHAM. I do not understand that that law has been repealed; but as to them I understand that it is not in force.

Mr. HOLMES. I may be wrong. But I understand the trouble there was that the charters antedated the law.

Mr. WICKERSHAM. Yes; the law is probably still in force.

Mr. HOLMES. Yes.

Mr. WICKERSHAM. And there is nothing in this bill to prevent making leases to railroads or other common carriers. What do you think about that?

Mr. HOLMES. I thought the Government was going to build up railroads. I do not believe in common ownership of railroads as transportation agencies and the commodities which they transport. I have advocated in several cases that the railroad might be permitted, under certain conditions, to mine the coal that it might need for its own use, but not otherwise.

Mr. WICKERSHAM. Now, you take the Copper River and the Northwestern, which is now completed within a few miles of this field. It may complete its line to the field and take 2,560 acres of this coal under a lease. Do you understand that?

Mr. RYAN. I understand that that is against the law.

Mr. HOLMES. I was under the impression that that would be a violation of existing law.

Mr. WICKERSHAM. That law was construed by the Supreme Court of the United States in the case of those Pennsylvania companies, and was declared unconstitutional as to them.

Mr. HOLMES. Yes; because their contract antedated the law.

Mr. WICKERSHAM. That is possible.

The CHAIRMAN. Are there any further questions the members of the committee desire to ask?

Mr. LENROOT. Dr. Holmes, I think you have some data with reference to the operation of leasing in the States by States. I do not know if that was put in the record or not. I would like very much to have it in the record if we can get it.

Mr. HOLMES. Yes. Shall I give you an abstract statement of the laws of the various States?

Mr. LENROOT. Yes.

Mr. HOLMES. I will do that.

Mr. RAKER. Mr. Wickersham, there is something I want to go into the record so that the committee can consider it. I had two questions in view on the question of repeal, and I think, in justice to Mr. Holmes and the committee, I ought to state them clearly. What was in my mind was sections 299 and 300 of the Judicial Code, as to repeal, which in substance provide:

That the repeal of existing laws, or the amendment thereof, embraced in this act—and you see that would relate to this code——

Mr. WICKERSHAM. Yes.

Mr. RAKER (continuing)

shall not affect any act done or any right accruing or accrued, or any suit or proceeding, including those pending on rehearing, appeal, certificate, or writ of certiorari, in any appellate court, referred to or included within the provisions of this act, pending at the time of taking effect of this act; but all such suits and proceedings pending at the time of the taking effect of this act, for causes arising or acts done prior to such date, may be commenced or prosecuted within the same time and with the same effect as if such repeal or amendments had not been made.

Now, that is section 299, and section 300 is similar to that.

The general law which would apply to all of those cases not within the Judicial Code is different, and I would like to read it into the record. It is section 13 of the Revised Statutes and reads as follows—and you will notice that the language is very different:

The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

I read that so that the committee will have that to consider.

Mr. WICKERSHAM. That does not cover the situation.

Mr. RAKER. The Judicial Code?

Mr. WICKERSHAM. Does not cover it.

Mr. RAKER. The Judicial Code does; but the general repealing act only relates to suits for forfeitures and penalties.

Mr. WICKERSHAM. But the Judicial Code clause only relates to the Judicial Code, of course.

Mr. RAKER. Yes; and of course the Judicial Code would not apply to general acts passed by Congress.

Mr. WICKERSHAM. Certainly not as to this bill.

Mr. RAKER. And so I thought, in justice to what I said, that we ought to have that before the committee.

The CHAIRMAN. Before we close the hearings, Mr. Finney, will you let me ask you one or two questions, if you please?

Mr. FINNEY. I would like first, Mr. Chairman, to have a correction made in my testimony, on page 21.

The CHAIRMAN. Yes.

Mr. FINNEY. In answer to a question by Mr. Graham, as to whether the use of the coal by the Navy would be a public use, I am made to say that I would not think it would be such. Now, what I did say, or should have said, was, "I think it would be a public use."

The CHAIRMAN. Yes, the necessary change will be made in the record.

You will recall, Mr. Finney, that yesterday there were several suggestions made by different members of the committee which it was thought would strengthen the bill and help it; and you said that you would consult with Dr. Holmes and prepare some amendments which you thought would reach those points.

Mr. FINNEY. Yes.

The CHAIRMAN. And Dr. Holmes has just handed me some suggested amendments.

Mr. FINNEY. I have a number of others, also.

The CHAIRMAN. And you have a number there that you would like to leave with the committee.

Unless there is some objection, the hearings will now be formally closed. There are one or two other witnesses who have asked to be heard later, but if they appear we can publish their testimony as a separate pamphlet.

(Thereupon, at 4 o'clock p. m., the committee adjourned.)

The letter following was furnished in response to request for data relative to ownership of known coal lands in Bering and Matanuska coal fields and identification of same:

DEPARTMENT OF THE INTERIOR,
UNITED STATES GEOLOGICAL SURVEY,
Washington, March 13, 1914.

Hon. SCOTT FERRIS,
Chairman of Committee on Public Lands,
House of Representatives.

MY DEAR MR. FERRIS: At the hearing of the House Committee on Territories, held on February 22, in the matter of leasing Alaska coal lands, I was asked to secure data in cooperation with the Commissioner of the General Land Office relative to the ownership of the known coal lands in the Bering and Matanuska coal fields. To secure this information it was first necessary to plat the location of the coal claims in these two fields and to indicate which had been rejected and which were still pending. No patents for coal lands have been granted in either field. The compilation of this information involved much work, both by the General Land Office and by the Geological Survey; hence the delay in sending this statement. The results are summarized as follows:

Of the 28,327 acres of coal land in the Bering River field, 4,995 acres are included in claims which have been canceled, 21,301 acres are included in claims now pending, and 2,031 acres are unlocated. Of the 70,708 acres of coal land in the Matanuska field, 6,445 acres are included in claims canceled, 5,204 acres in claims pending, and 59,059 acres are unlocated. It should be added that there are in both fields areas of possible coal land that have in part been entered which are not included in above estimate.

The above estimate is the result of the joint work of the General Land Office and the Geological Survey. The commissioner has agreed that I should transmit it to you.

Very respectfully,

ALFRED H. BROOKS,
Geologist in Charge.

The following letter from the Commissioner of the General Land Office is in response to request for additional data relative to Alaska coal lands:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 14, 1914.

Hon. SCOTT FERRIS,
Chairman Public Lands Committee,
House of Representatives.

MY DEAR MR. FERRIS: Since my appearance before your committee at the hearings on the bill introduced by you "to provide for the leasing of coal lands in the Territory of Alaska, and for other purposes" (H. R. 14233) I have gone into the matter with a view to accomplishing the identification of the lands in question as early as practicable, should the bill become a law. I had hoped to be able to transmit with this letter Geological Survey maps of the Bering River and Matanuska coal fields showing the location of the various kinds of coal with relation of the coal claims, both pending and canceled, of record in this office. These claims have been platted on the geologic maps which are now in the hands of the Geological Survey for completion of certain geologic data acquired last summer and not shown on the published maps. They will be forwarded to you as soon as received by this office.

As is known to you, the Bering River field is practically covered with claims located under surveys made by private engineers for the claimants. The same condition is true of the best portions of the Matanuska and other fields. These surveys define tracts upon the ground in rectangular form, in accordance with the requirements of the special act relating to coal claims in Alaska (33 Stats., 525, act of Apr. 28, 1904) and have been approved by the United States surveyor general for Alaska, but they are not public-land surveys executed in accordance with the general requirements of law with reference to the subdivision of the public lands into townships approximately 6 miles square, related to a connected system from a common initial point by reference to which they may be described by the usual legal subdivision of section, township, and range. Nevertheless the surveys of coal claims made in accordance with the special act referred to legally define the tracts upon the ground and their locations with reference to a regular network of township surveys may be determined when such regular township surveys are extended to include the lands in question.

While the private surveys duly approved as aforesaid undoubtedly sufficiently identify the lands in the Bering River field, and their use would expedite their availability for leasing purposes, whether there was further cancellation of pending claims or not, I am of the opinion that the regular system of public-land surveys should be extended over the Matanuska and other fields, and that such existing claims therein as hereafter may be found valid should be segregated by metes and bounds if found not to be conformable to the Land Office net.

Your attention is invited to the fact that the current appropriation for surveying the public lands, act of June 23, 1913 (38 Stats., 46), which is the only appropriation available for any surveys in Alaska, provides that—

"* * * in expending this appropriation preference shall be given, first, in favor of surveying townships occupied, in whole or in part, by actual settlers and of lands granted to the States by the act approved February twenty-second, eighteen hundred and eighty-nine, and the acts approved July third and July tenth, eighteen hundred and ninety, and to surveying under such acts as provide for land grants to the several States and Territories, and such indemnity lands as the several States and Territories may be entitled to in lieu of lands granted them for educational and other purposes which may have been sold or included in some reservation or otherwise disposed of, except railroad-land grants, and other surveys shall include lands adapted to agriculture and lands deemed advisable to survey on account of availability for irrigation or dry farming, lines of reservations, and lands within boundaries of forest reservations."

The estimates submitted by the department for surveying the public lands 1915 are in the same language in the matter of classes of land to which preference must be given in surveying as that in the current appropriation. As there are now on file sufficient demands of States and settlers to more than absorb the available funds for the fiscal year 1914, it is apparent that unless Congress provides for the survey of the Alaska coal fields, either by specific provision for diverting a portion of the regular appropriation for the fiscal year 1915 and making it immediately available or by special appropriation for the work con-

templated by the bill, the survey of the unidentified lands, which is a necessary prerequisite to leasing, can not be undertaken.

The cost of execution of the surveys of the three principal Alaska coal fields will be approximately $100,000. As the current surveying appropriation can not be expended for coal surveys and as the entire amount, $700,000, of the estimated surveying appropriation for 1915 will be required to survey lands applied for under the terms of the act, it would be to the public interest, and I so recommend, that $100,000 be appropriated for the survey of the lands contemplated by the bill and that the same be made available upon the passage of the bill and until expended.

Surveys should be commenced in the Bering River field by May 1 and those in the Matanuska and Tanana fields by June 1. The supervisor of surveys advises me that we have available men and equipment such that, in the absence of unforeseen difficulties, the surveys can be all or nearly all completed in the field during the coming season if funds therefor are immediately available.

Yours, very truly,

CLAY TALLMAN, *Commissioner.*

LBAp'15